



Los Angeles County  
Department of Regional Planning

*Planning for the Challenges Ahead*



DATE: July 3, 2003

James E. Hartl, AICP  
Director of Planning

TO: Supervisor Yvonne Brathwaite Burke, Chair  
Supervisor Gloria Molina  
Supervisor Zey Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

FROM:  James E. Hartl, AICP  
Director of Planning

SUBJECT: **MOTION BY SUPERVISOR ANTONOVICH REGARDING REVIEW OF  
ALTERNATIVE TECHNIQUES TO PREPARE ENVIRONMENTAL  
DOCUMENTS** (Board Meeting of March 18, 2003 Syn. #77)

In response to the Board Motion of March 18, 2003 directing the Department of Regional Planning to review various alternative techniques regarding the preparation of environmental documents, we have reviewed the environmental processes of several county and city government agencies with respect to the preparation of environmental impact reports (EIRs). We have also provided three key recommendations to improve the Department's EIR preparation process.

Our analyses indicate that there are two basic methods to have an EIR prepared in compliance with the California Environmental Quality Act (CEQA). These are the applicant-contracted EIR consultant and the Lead Agency-selected EIR consultant. We found one instance where a jurisdiction prepares its own EIR (Sacramento County). Larger jurisdictions are more likely to utilize the applicant-contracted methods while smaller municipalities or counties follow the Lead Agency-selected method.

Variations exist on both basic methods for the preparation of an EIR including combining of the applicant-contracted and Lead Agency-selected procedures. Orange County makes use of a three-party Memorandum of Understanding where the County enters into an agreement with both the applicant and the EIR consultant governing the responsibilities of all parties during EIR preparation. Under this agreement, the applicant participates in the consultant selection process for the project and is responsible for all costs incurred for the preparation and review of the EIR.

The County's use of the applicant-contracted method has successfully been employed for more than two decades, albeit with the occasional perception of partiality toward an

applicant or its project. In order to improve the County's process, we recommend and will implement the below-listed procedural changes, which are modeled after several successful components of EIR preparation processes employed by other jurisdictions in California. These recommended changes will greatly enhance the County's oversight during the environmental review process and allow staff to remain focused on the substantive review of EIRs without the added burden of full contract management, while still taking into consideration the County's current fiscal and staffing constraints. These improvements will avoid the considerable expense to the County in implementing the Lead Agency-selected alternative to replace the existing environmental process.

***1) Initiate use of Memorandum of Understanding/Affidavit (MOU)***

The use of the Memorandum of Understanding/Affidavit three-party agreement would make the County co-equal to the applicant in the EIR preparation process. The applicant and the consultant(s) who submit to the County an EIR or part thereof must sign the MOU. This agreement would detail the responsibilities of the applicant and consultant(s) regarding the form and content of all environmental documents submitted to the County in order to prevent information confidentiality. The MOU would also reiterate the rights retained by the County regarding access to all materials and communications between the applicant and consultant.

***2) Establish a County-Authorized List of Environmental Consultants***

The creation of a County-authorized list from which applicants must hire an environmental consultant, will allow the County to establish appropriate criteria and review the statement of qualifications of private consultants. The establishment of an approved environmental consultant list will also allow the County to disqualify those consultants who clearly demonstrate poor or unethical work performance.

***3) Revise the County's adopted Environmental Guidelines***

Revisions of the "County of Los Angeles Environmental Document Reporting Procedures and Guidelines" reflecting the above requirements will provide applicants a detailed explanation of all County requirements including all terms and conditions of the above-referenced MOU. Funding for a comprehensive revision of the County's Environmental Guidelines has been requested annually during the Department fiscal budget preparation list; however, resources have yet to be authorized. The complete revision of the County Environmental Guideline is reported as a Significant Unmet Need in the Department's 2003-2004 fiscal year budget. Your Board must adopt any revisions to these Environmental Guidelines.

**The above recommendations require no action by your Board at this time.** The Department of Regional Planning will immediately begin implementation of the applicant-consultant-County Memorandum of Understanding/Affidavit, pending its review by County Counsel. A one-year pilot program will be established as a trial period for implementation of this procedure.

The Department will also initiate a revision of the County Environmental Guidelines to incorporate the new MOU mandate and to provide clear explanations of the County's environmental process. These modifications to the County Environmental Guidelines will be presented to your Board for formal adoption at the end of the summer. During the one-year pilot program, the County-authorized environmental consultant list will be prepared; establishment of the list will take a minimum of 6-9 months.

Progress made on the implementation of these efforts will be reported back to the Board of Supervisors in one year.

The attached report and accompanying attachments details Regional Planning's findings as summarized above, and presents our recommendations of how the County's environmental document preparation process will be improved.

If you have any questions, please call me or have your staff contact Daryl Koutnik of the Impact Analysis Section at (213) 974-6461.

JEH:DLK:rjt

#### Attachments

Cc: Chief Administrative Office  
County Counsel (Rick Weiss, Judith Fries)  
Executive Office  
Department of Public Works  
Department of Health Services  
Department of Parks and Recreation

Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and Recommendations for  
Revision of Current County Practices

July 3, 2003

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Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and  
Recommendations for Revision of Current County Practices

July 3, 2003

**BACKGROUND**

On March 18, 2003, the Board of Supervisors made a request of the Department of Regional Planning (DRP) for information regarding environmental document preparation practices in Los Angeles County. The Board instructed the Department of Regional Planning to conduct a review of alternative methods for preparing environmental documents required under the California Environmental Quality Act (CEQA). The Board also directed the Department to present recommendations for revisions to the current County process to ensure that environmental documents conform to the requirements of CEQA, and provide the County with a stronger mechanism to avoid the potential perception of partiality toward the project applicant during the environmental document preparation process.

By way of background, concerns were recently raised with respect to the Newhall Ranch Specific Plan project Environmental Impact Report (EIR) including the issue of confidentiality agreements in the disclosure of information over the discovery of the San Fernando Valley spineflower populations on the subject property. On December 17, 2002, the Board instructed the Department of Regional Planning to prepare a report with a detailed chronology of events regarding the San Fernando Valley spineflower and the Newhall Ranch project, and to conduct a survey of local planning agencies to determine what environmental document preparation procedures are employed in other jurisdictions.

The Department of Regional Planning submitted a report to the Board on January 13, 2003 with a summary of the events that transpired regarding the spineflower and the Newhall Ranch Specific Plan. The report also included a summary of other local agency document preparation practices. It was staff's conclusion that the Newhall Ranch Company's use of consultant confidentiality agreements did not result in the untimely withholding of information from the County related specifically to the discovery and location of spineflower populations on the project site.

The following report builds on the January 13, 2003 analysis and responds to the March 18, 2003 Board motion instructing the Department of Regional Planning to provide additional analysis regarding potential alternatives and to recommend revisions to the County's current environmental document preparation practice. The following discussion also includes a brief analysis of recently introduced state legislation (AB 406), two environmental impact report (EIR) preparation/contracting arrangements widely used in California, and finally, recommended revisions to the County's current practices.

## **OPR SURVEY**

In 1997 and 1999 the Governor's Office of Planning and Research (OPR) surveyed the state's planning agencies to determine the number of public agencies that permitted developers to retain the EIR consultants. Of those jurisdictions who responded to the 1999 OPR survey, 166 cities and counties in California allowed project applicants to produce and submit draft environmental review documents. This number represented a 286% increase from the 58 jurisdictions that permitted this practice in 1997; this indicates a trend toward more jurisdictions permitting the applicant to select the environmental consultant. A summary of these surveys is included in **Attachment 1**.

Moreover, the 1999 survey results appear to indicate that most larger jurisdictions permit developers to retain the EIR consultant. These agencies include the Counties of Los Angeles, Orange, San Diego, and Santa Clara, and the Cities of Los Angeles, Long Beach, San Francisco, and San Jose.

The OPR surveys also suggested that public agencies of moderate and small size allowed applicants to participate in the contracting process with the local agency, or they retained the EIR consultants without any applicant involvement. Some of these jurisdictions include the Counties of Ventura, Santa Barbara, Marin, and Alameda, and the cities of Burbank, and Bakersfield.

## **AB 406**

Assembly Bill 406 (Jackson), introduced as 2003-2004 California legislation, seeks to amend Sections 21082.1, 21089 and 21160 of the Public Resources Code, relating to CEQA and environmental document preparation.

The bill was introduced on February 14, 2003 and was amended and passed by the Assembly Committee on Appropriations on June 2nd. However, AB 406 was brought to the Assembly Floor on June 4, 2003 and failed to get the necessary votes for passage. Before the Assembly closed its current session, the author was granted a request to rescind the vote, expunge the record, and refer the bill to the Inactive File. The bill may be reintroduced in January 2004 for amendment and reconsideration before the Assembly.

The California Environmental Quality Act (CEQA) currently requires a lead agency to prepare or to cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds the project will not have a significant effect on the environment (CA Public Resources Code Section 21002.1).

As amended on June 2, 2003 AB 406 would prohibit a person, including the project applicant or applicant's retained consultant, from submitting a draft environmental

review document, or part thereof, to the public agency reviewing the project. Environmental review documents shall be prepared directly by, or under contract to a public agency. These proposed provisions would apply to **all** environmental documents: Environmental Impact Reports (EIRs), Negative Declarations, Mitigated Negative Declarations, and **all** supporting technical reports necessary to substantiate the documents' findings (traffic studies, biota reports, archaeology studies, etc.).

The bill would prohibit the applicant from imposing on its consultants a confidentiality requirement that inhibits or prevents the disclosure of information regarding potential environmental impacts, mitigation measures, or project alternatives to the lead agency or to the public. Public agencies would be authorized by the bill to recover from the applicant the cost of producing and reviewing the environmental review document, including the cost of retaining an independent environmental consultant.

In April, at the request of the County's Office of the Chief Administrative Officer, the Department of Regional Planning drafted a report containing an expanded analysis of the bill (**Attachment 2**). The recommended position of the Department was to oppose AB 406.

### **ENVIRONMENTAL DOCUMENT PREPARATION**

Although a public agency may prepare its own environmental impact reports, this survey could find only one that prepares their own EIRs (Sacramento County). In-house preparation of EIRs is problematic for many public agencies primarily because of the need for retention and funding of staff members specifically trained in various specialized technical areas, and for the need to devote staff hours necessary to thoroughly prepare all aspects of an EIR.

The two methods commonly available to a Lead Agency to prepare an EIR are the applicant-contracted consultant and the lead agency-selected consultant. Each of these methods are described and discussed below. Note that whichever method is used by a jurisdiction, individual variations exist in implementation.

A full description of the procedures used by all surveyed jurisdictions can be found in **Attachment 3**.

#### **Method A: Applicant-Contracted EIR Consultant**

The County of Los Angeles Department of Regional Planning currently processes environmental documents in two ways depending on the type of analysis necessary. DRP staff prepares and processes all draft environmental documents which support determinations of the following: Negative Declaration, Mitigated Negative Declaration, Categorical Exemption, or the need to prepare an EIR.

In 2002, DRP staff prepared 196 Initial Studies resulting in approximately 162 Negative Declarations/Mitigated Negative Declarations, and 13 determinations necessitating the preparation of an EIR.

On average, five to six new EIRs are submitted for screencheck review each year. Currently there are a total of 25 active EIRs in various stages being processed by the Department of Regional Planning.

The Department's procedure for the preparation of Draft EIRs permits the applicant to retain its own consultants for analysis and review of potential environmental impacts of a project, for the preparation of technical reports necessary to complete a CEQA-mandated environmental review, and for the preparation of a Draft EIR.

A primary responsibility of County staff is to provide independent and thorough review of applicant-prepared environmental documents. County staff from DRP, Department of Public Works, County Counsel and all other departments, review **all** draft documents prepared by and requested from the applicant, and initiates and oversees the interdepartmental screencheck revision process.

The Draft EIR and its supporting technical reports are accepted as an official County Draft EIR and released for public review **only** when the reports are satisfactory to the County in both form and content.

The County's procedure for preparation of EIRs has been reviewed in the state courts and has been previously deemed to be in compliance with existing CEQA mandates. In *Friends of La Vina v. County of Los Angeles*, 232 Cal. App. 3d 1446 (1991), the California State Court of Appeal interpreted existing law as allowing project applicants to prepare draft environmental documents under CEQA. The Court confirmed the following:

- (1) Public agencies may comply with California Environmental Quality Act (CEQA) by adopting environmental impact report (EIR) materials drafted by the applicant's consultant, so long as the agency independently reviews, evaluates, and exercises judgment over that documentation and the issues it raises and addresses, and
- (2) [T]here is no rule against contractor drafting of responses to comments of draft environmental impact report (EIR) under California Environmental Quality Act (CEQA).<sup>1</sup>

The City of Los Angeles and San Diego County are examples of other jurisdictions using an EIR preparation method similar to that followed by Los Angeles County. The City of Los Angeles currently employs two planners to process approximately 15 active EIRs. San Diego County processes approximately 25 EIRs per year which are the responsibility of 10 staff planners.

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<sup>1</sup> Summary of *Friends of La Vina* cited from CEQA case law reviews: [http://ceres.ca.gov/topic/env\\_law/ceqa/cases/](http://ceres.ca.gov/topic/env_law/ceqa/cases/).



A modification of the applicant-contracted method for preparation of an EIR that adopts provisions of the Lead Agency-selected procedure combines the best feature of both methods. Orange County makes use of a three-party Memorandum of Understanding where the County enters into an agreement with both the applicant and the EIR consultant regarding the responsibilities of all parties for the preparation of the EIR. The applicant participates in the consultant selection process for the project and is responsible for all costs incurred for the preparation and review of the EIR.

### **Method B: Lead Agency-Selected EIR Consultant**

The Lead Agency-selected method requires the Lead Agency to be responsible for consultant selection, to directly enter into a contract with the environmental consultant, and to be responsible for contract preparation, and contract management of EIR projects. A trust account is usually established by the applicant with the Lead Agency to defray the cost of preparing an EIR.

For small projects, Sole Source Contracting allows a Lead Agency to quickly obtain “pre-approved” authorization to contract with one particular consultant under a long-term agreement with the Lead Agency. This arrangement permits the Lead Agency to move quickly on projects that are relatively minor in scope. The format frequently used under these circumstances is a Time and Materials contract (T&M). The basic elements of the T&M contract is to negotiate a “not-to-exceed” cost with the environmental consultant for a fair market per-hour labor rate that covers overhead and profit, and includes provisions for reimbursement for direct material costs. The consultant makes a good-faith effort to meet project needs within the ceiling price, while the Lead Agency exercises appropriate management to ensure efficient performance.

For large-scale projects, the Request for Proposals (RFP) process is usually employed to select an environmental consultant. This requires the Lead Agency to undertake a review and selection process lasting a minimum of three months of processing time. The RFP specifies a detailed work schedule and list of deliverables with a total cost estimate (i.e., the Fixed-Cost Method). Payments to the environmental consultant are made based on submission of acceptable products at specific milestones during the contracted CEQA process.

As an alternative to the use of the RFP process, a Lead Agency may periodically open up a consulting services list by requesting Statements of Qualifications (SOQ) and then assemble a “preferred” consultant list that reflects different levels of expertise and from which the Lead Agency may contract to prepare desired work products. A list of consultants with comparable skills may be used on a rotating basis. Examples of jurisdictions utilizing this method or some modified version are the Counties of Ventura, San Bernardino, and Santa Clara, and the Cities of Santa Clarita, and Carlsbad.

**Table 1.**

Los Angeles County Department of Regional Planning  
**Summary of Surveyed Jurisdictions, June 2003**

<b><i>Jurisdiction</i></b>	<b><i>Method for Contracting EIR Consultant</i></b>	<b><i>No. of EIRs in Progress</i></b>	<b><i>No. of Staff Reviewing EIRs</i></b>	<b><i>EIR to Staff Ratio</i></b>
<b><i>Los Angeles County</i></b>	<b><i>Applicant Contract</i></b>	<b><i>25</i></b>	<b><i>2</i></b>	<b><i>12.5</i></b>
<b><i>Neighboring Counties</i></b>				
Kern	Applicant Contract	15	6	2.5
Orange	Three-Party Contract	3	3	1
Riverside	Applicant/County Contract	15	5	3
San Bernardino	Direct Contract	15	2	7.5
San Diego	Applicant Contract	25	10	2.5
Ventura	Direct Contract	3	3	1
<b><i>Other Counties</i></b>				
El Dorado	Direct Contract	2	1	2
Sacramento	In-House/Direct Contract	35	25	1.4
San Francisco	Applicant Contract	25	20	1.3
San Luis Obispo	Direct Contract	15-20	4	2.5
Santa Barbara	Direct Contract	10	50	0.2
Santa Clara	Direct Contract	7	4	1.8
<b><i>Cities within Los Angeles County</i></b>				
Los Angeles	Applicant Contract	15	2	7.5
Palmdale	Either way	2	2	1
Pasadena	Direct Contract	7	5	1.4
Santa Clarita	Direct Contract	3	1	3
Santa Monica	Direct Contract	N/A	14	N/A
<b><i>Other Cities</i></b>				
Brea	Direct Contract	3	5	0.6
Carlsbad	Direct Contract	2	2	1
La Habra	Direct Contract	1	5	0.2
Sacramento	In Transition to Applicant Contract	25-30	9	3
San Diego	Applicant Contract	16	16	1
San Jose	Applicant Contract	20	4	5

\*\* Please note that specific procedures for direct contracting by the Lead Agency vary between jurisdictions. In all cases, however, the Lead Agency contracts with the EIR consultant and is responsible for contract preparation and management.

\*\* Please see **Attachment 3** for a complete description of the procedures implemented by each jurisdiction.

## **ANALYSIS**

Several important factors must be carefully considered while Los Angeles County evaluates what type of procedural changes may be necessary in its EIR preparation process. Any mandated revisions to the County's current EIR preparation process must be devised to take into full account the Department of Regional Planning's existing fiscal and organizational constraints. Additionally, the increased time necessary for review of an environmental document must be considered, as it will have a negative impact on the pace of development in the County. The following discussion is an analysis of the considerations and ramifications of implementing direct contracting for the preparation of EIRs.

### **County Staffing and Infrastructure**

The County's existing system for review and preparation of EIRs has merit primarily because it provides a mechanism for a large jurisdiction such as the County to keep pace with the large number of development projects requiring CEQA review.

Current EIR preparation procedures emphasize County staff's role in providing independent review and analysis of environmental documents prepared for public scrutiny. Therefore, optimal use of limited staff time is a critical consideration. Staff must remain focused on substantive review of EIRs. Staff planners are better able to respond in a timely manner to all the requirements of environmental project review without the added burden of contract management.

The Current Planning Division's Impact Analysis planning staff is responsible for the review of EIR documents. The Department of Regional Planning currently has approximately 100 EIR draw-down accounts, of which twenty-five (25) are active EIR projects. At present, only two planners are available and committed to reviewing EIRs.

The budgeting and accounting aspects for EIR projects processed within the DRP are presently handled by the Department's Fiscal and Technical Analysis Division. Current account management of EIR accounts involves billing staff hours to EIR draw-down accounts, monitoring account balances, and facilitating account replenishment, when necessary.

In order for the County to implement direct contracting, the Department would need to significantly amend the procedures of the Fiscal and Technical Analysis Division staff. Current account management practices will require changes to incorporate the duties of full contract management. This will require staff development, and preparation of the detailed Request for Proposals (RFP) and the contract, facilitation of Board of Supervisors' approval for the contract, auditing of all account activities, disbursing of payments, and coordinating with planning staff to supervise EIR consultants to ensure efficient and timely performance. Full contract management would also require DRP planning staff to assume the following additional duties: a) monitor the consultant's

adherence to established time schedules; b) monitor and report on the consultant's productivity and work performance; and c) implement impartial consultant oversight to guarantee process integrity.

It is estimated that a minimum of three additional Fiscal and Technical Analysis Division staff would be needed to perform full contract management if the DRP were to directly contract for environmental consultants (not including contracts for supporting technical documents). At least two additional planning staff members would be needed to provide assistance in drafting of RFPs, and for timely review of EIR documents.

## **Fiscal Feasibility**

Other jurisdictions surveyed that utilize direct contracting for EIRs, process an average of 9 EIRs per year with 5 staff. Under the applicant-contracted method, the DRP is currently in various stages of processing 25 EIRs with 2 planning staff devoted to their review. The average EIR-to-staff ratio in other jurisdictions is 2.3, although the ratio varies from 7.5 to less than 1 EIR per reviewing staff member. The County currently has an EIR-to-staff ratio of 12.5 EIRs per planning staff member.

To ensure timely processing and to maintain the Department's current level of productivity, DRP would need an increase of a minimum of five new staff in order to implement direct contracting for preparation of EIRs (2 Current Planning Division staff and 3 Technical and Fiscal Analysis Division staff).

The estimated cost would be a minimum \$350,000 annually for staff salaries alone. This cost to the County would be incurred primarily because of the need for additional staff to handle the duties of full contract management, project management, and continued content review of EIRs. A substantial portion of this cost would be recovered from the applicant through an established EIR drawn-down account. However, additional funding would also be necessary for Department overhead and equipment needs.

Furthermore, applicants for new EIR projects would need to be apprised that their projects may require an increase in review and processing time as a result of additional staff responsibilities with direct contracting. DRP planning staff will also need training in contract management in order to properly handle EIR contracts.

It is important to note that in the event the County implements full direct contracting consistently to **all** environmental documents (EIRs, Negative Declarations, and Mitigated Negative Declarations) the above estimates of additional staff and implementation cost for EIRs only, would need to be increased. In order for the Department to maintain its current level of service, an estimated 10 additional staff members would be needed, costing the County approximately \$700,000 annually for staff salaries alone.

## **Indemnification**

The County currently requires indemnification from all project applicants. The County would need to make clear to all applicants that compliance with this indemnification requirement is mandatory as it relates to the environmental review process for their proposed project even if they cannot participate in the preparation of environmental documents.

## **RECOMMENDATIONS**

The questions recently raised concerning the Newhall Ranch project Environmental Impact Report (EIR) and the issue of the applicant's use of confidentiality agreements, suggest that changes to the County's existing EIR preparation process will be beneficial.

In light of conducting a review of alternative methods for preparing environmental documents required under CEQA, it is the Department of Regional Planning's recommendation to make three key changes to the County's EIR preparation process. These recommended procedural changes are generally consistent with EIR preparation processes employed by other jurisdictions in California. These specific actions would improve the way the County implements its EIR preparation procedures by making the County co-equal to the applicant with the use of a three-party MOU/Affidavit agreement. These actions would also enhance County oversight and help dispel the perception of partiality toward the project applicant during the environmental document preparation process.

The use of applicant-contracted consultants for preparation of Environmental Impact Reports is recommended in conjunction with the implementation of the following specific procedural changes:

1. Initiate use of Memorandum of Understanding/Affidavit (MOU);
2. Revise the County's adopted Environmental Guidelines; and
3. Establish a County-authorized list of environmental consultants.

### ***1. Establish a Memorandum of Understanding***

Project applicants and each member of their team of environmental consultants will be required to sign a Memorandum of Understanding/Affidavit (MOU) with the County. By entering into the legally binding MOU, the applicant and their environmental consultants attest that, under the penalty of perjury, all documents submitted to the County are in conformance with all requirements set forth in the MOU and the "County of Los Angeles Environmental Document Reporting Procedures and Guidelines". A copy of the Draft Memorandum of Understanding/Affidavit is included in **Attachment 4**.

The Memorandum of Understanding/Affidavit will include all of the following provisions:

- a) The County is the Lead Agency with land use and planning jurisdiction in the above referenced project area of unincorporated Los Angeles County as pertains to the California Environmental Quality Act (CEQA).
- b) The Applicant has submitted an application for the development of the proposed Project whereas the County and the Applicant have agreed that the Project has the potential to cause major environmental impacts, necessitating the preparation of an Environmental Impact Report (EIR).
- c) The EIR Consultant retained by the Applicant is a professional environmental consultant or consulting firm with extensive experience in the preparation of EIRs.
- d) The Applicant and EIR Consultant shall be responsible to ensure that all Sub-Contracted Consultants comply with all terms and conditions set forth in the MOU.
- e) The EIR Consultant and all Sub-Contracted Consultants shall not be a subsidiary of the project Applicant or have any financial interest in the proposed project or any other property or development of interest to the Applicant.
- f) The County reserves the right to further review the statement of qualifications and past work product to confirm that the EIR Consultant and/or Sub-Contracted Consultants are fully qualified for preparation of the EIR and related technical reports for the Project.
- g) Applicant is designated as a Contracting Agent for administering the contract with the EIR Consultant for the preparation of the EIR.
- h) The Applicant shall be responsible for the management of the EIR Consultant in the preparation of the EIR and associated technical reports including: the content of the EIR, the extent and detail of topic area discussions, the consideration of, and written response to comments received during the Notice of Preparation, circulation of the Draft EIR, and the Final EIR.
- i) The Applicant shall be responsible for one-hundred percent (100%) of EIR preparation and review costs incurred by the County and the EIR Consultant.
- j) The Applicant shall be responsible for one-hundred percent (100%) of the cost incurred by the County for a third-party review of any portion of the EIR when such a review is deemed necessary by the County.
- k) Upon request, all EIR Consultants/Sub-Contracted Consultants shall execute a document certifying that all pertinent environmental information has been

disclosed to the County, and that no pertinent information has been left out of the administrative record or deliberately withheld from the County at the request of the Applicant.

- l) The Applicant and EIR Consultant/Sub-Contracted Consultants shall not enter into any form of confidentiality agreement that prohibits disclosure of information to the County or other public agencies.
- m) The Applicant and EIR Consultant shall be responsible to ensure that the EIR document, including its technical reports, reflects the independent judgment of the County, per Public Resources Code Section 21082.1, including all documentation prepared and submitted by the EIR Consultant and/or Applicant with respect to the Draft EIR, the Response to Comments Document, and the Final EIR.
- n) The Applicant and EIR Consultant shall be responsible to ensure that all EIR documents and materials are prepared utilizing accurate and verifiable field techniques and professional work performance standards, and are prepared in conformance with all applicable CEQA requirements, and other County, State, and Federal rules, regulations, and laws.
- o) The EIR Consultant shall be responsible to verify that all EIR documents represent their complete and independent judgment and analysis of the Project-specific environmental setting, issues, potential impacts, and mitigation measures associated with the proposed Project.
- p) The EIR Consultant shall draft the EIR in accordance with all directions from County staff regarding its form and content.
- q) The Applicant and EIR Consultant shall be responsible for public noticing and scheduling with public meetings related to the Project and for distribution of the Draft and Final EIRs.
- r) The County retains the right to attend any and all meetings between the Applicant and any EIR Consultant and/or their subcontracted consultants. It is the responsibility of the Applicant to provide a minimum of one-week prior notice of any and all such meetings.
- s) Copies of all correspondence, meeting schedules, minutes, and draft technical reports generated by the EIR Consultant/Sub-Contracted Consultants shall be submitted to the County prior or simultaneously to submittal to the Applicant. Copies of any such documents pertaining to the EIR generated by the Applicant for the EIR Consultant shall be provided to the County.

- t) Upon request, the EIR Consultant/Sub-Contracted Consultants shall submit to the County all field notes, resource documents, and supplemental technical studies used in the preparation of the EIR.
- u) The EIR Consultant shall submit the initial Draft EIR to the County prior to submitting it to the Applicant. Any subsequent changes to the document will be monitored and reviewed by the County before the Applicant/EIR Consultant resubmit the Draft EIR for formal review through County screencheck and public review processes. This does not preclude the Applicant from commenting on the contents of the environmental document.
- v) The Applicant shall defend, indemnify and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul certification of the EIR associated with the Project and/or any part of the environmental review process, which action is brought within the applicable time period of Government Code Section 65009. The County shall notify the Applicant of any claim, action, or proceeding and the County shall reasonably cooperate in the defense.

## ***2. Revise County's Environmental Guidelines***

The County will revise its "County of Los Angeles Environmental Document Reporting Procedures and Guidelines" to articulate these current changes. This modification will provide to applicants a detailed explanation all new County EIR preparation requirements including all new terms and conditions of the MOU as well as explanation of the expected procedures of the environmental process.

Funding for a complete and comprehensive revision of the County's Environmental Guidelines has been requested annually during the Department fiscal budget preparation list. Resources, however, have not been allocated. The complete revision of the Guidelines is reported as a Significant Unmet Need in the Department's 2003-2004 fiscal year budget. The complete revision will provide updated information regarding all aspects of the environmental review process. All new State and County requirements and all existing requirements pertaining to the form, content, and accuracy of all environmental documents prepared by private consultants will also be reiterated in the full revision of the Guidelines. The revised Environmental Guidelines must be adopted by your Honorable Board.

## ***3. Establish County-Authorized Environmental Consultant List***

The Department of Regional Planning will establish a County-authorized environmental consultant list from which project applicants will be required to hire environmental



consultants. Placement on the County's environmental consultants list would include a thorough application process that is designed to review a prospective consultant's statement of qualifications, recent work product, and relevant work history. The County will establish appropriate minimum qualifications and performance standards that a prospective consultant must meet.

The primary benefit of instituting an authorized consultants list is the active County involvement in the evaluation and screening of environmental consultants. Closer scrutiny of environmental consultants will allow the County to disqualify those who clearly demonstrate poor and/or unethical work performance. Once established, this consultant list will be reviewed annually.

### **IMPLEMENTATION AND COSTS**

The Department of Regional Planning's analysis of the County's current process for preparation and review of Environmental Impact Reports, and its review of alternative methods employed by other jurisdictions yielded three recommendations for implementation.

The DRP will immediately implement three-party County-Applicant-Consultant MOUs in order to sufficiently address questions raised regarding the perception of partiality toward the project applicant during the environmental review process. Concurrent with the approval of the MOU by County Counsel, a one-year pilot program will be initiated as a trial period for the evaluation of these new procedures. A copy of the approved MOU will be provided to the Board offices prior to its use by DRP.

During the one year pilot program, the Department of Regional Planning will initiate a partial revision of the County Environmental Guidelines and the establishment of a County-authorized environmental consultant list.

The updating of the County Environmental Guidelines will be considered a limited revision, incorporating the new requirements set forth in the MOU and other key procedural changes that have occurred since the last version was adopted. These new Guidelines will be presented to your Board for formal adoption at the end of this summer. The assembly of an approved environmental consultant list will require a minimum of 6-9 months to prepare.

Results from the MOU pilot program and the effectiveness of the County-authorized environmental consultant list will be reported back to your Honorable Board at the end of the one year period.

The cost of implementing these three recommendations is estimated at **\$110,000** and will require an estimated allocation of a minimum of 320 staff hours for preparation of the County-authorized environmental consultant list and for the initial revision of the County Environmental Guidelines.

The Department of Regional Planning currently has 25 active or existing EIR projects for which the applicant has contracted directly with an environmental consultant of their choice, and has not been subject a Memorandum of Understanding/Affidavit regarding the environmental review process. Several other EIR projects are or will be likely filed prior to any formal change of environmental procedures. All of these are subject to current procedures. In order to avoid public confusion, a policy decision will be made regarding the effective date by which all subsequent projects will be held to these new procedures.

In conclusion, it is the recommendation of the Department to implement a method where applicants are allowed to retain environmental consultants for preparation of EIRs. Concerns regarding County staffing and budget constraints, and the negative impact on the pace of development in the County associated with extended project processing time, support this recommendation. Furthermore, applicants are the most familiar with their project and property and are best equipped to provide important information directly to the environmental consultant. Additionally, many applicants have access to accounting and contracting infrastructure better suited to contract management than the DRP.

With careful implementation of the specific procedural changes recommended in this report, the County will have stronger tangible mechanisms that enhance the County's oversight during the preparation and review of Environmental Impact Reports submitted by private consultants.

Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and  
Recommendations for Revision of Current County Practices

July 3, 2003

***ATTACHMENT 1***

*1997 & 1999 OPR Survey*

May 1998

## Jurisdictions That Have Adopted Regulations for Mitigation Monitoring Programs Applied to Individual Projects

The following cities and counties have adopted general regulations or guidelines for the mitigation monitoring or reporting programs which are applied to individual projects:

Adelanto	Cotati	Indian Wells	Morgan Hill	Rio Vista	Solana Beach
Agoura Hills	Culver City	Industry	Mount Shasta	Ripon	Soledad
Alpine County	Cypress	Irvine	Murrieta	Riverbank	Solvang
Anaheim	Dana Point	Kern County	Napa	Riverside	Sonoma
Angels Camp	Davis	King City	Nevada County	Rocklin	Sonoma County
Arroyo Grande	Del Rey Oaks	Kings County	Newark	Rohnert Park	Sonora
Artesia	Delano	Kingsburg	Newman	Rolling Hills	South El Monte
Arvin	Dixon	La Canada-Flintridge	Newport Beach	Roseville	South Gate
Atascadero	Downey	La Habra	Norco	Sacramento	South Pasadena
Avenal	Duarte	La Mesa	Novato	Sacramento County	South San Francisco
Bakersfield	Dublin	La Mirada	Oakdale	San Benito County	St. Helena
Barstow	El Cajon	La Verne	Oceanside	San Bernardino	Stanislaus County
Bell Gardens	El Cerrito	Laguna Hills	Ojai	San Bernardino County	Stanton
Belmont	Encinitas	Lake Forest	Ontario	San Clemente	Susanville
Bishop	Escondido	Lakeport	Orange	San Diego	Taft
Bradbury	Eureka	Lancaster	Orange County	San Diego County	Tehama County
Brea	Fairfax	Lathrop	Orange Cove	San Dimas	Temecula
Brisbane	Fairfield	Lemon Grove	Oxnard	San Fernando	Thousand Oaks
Buellton	Fontana	Lemoore	Palm Desert	San Jacinto	Tiburon
Burbank	Fort Bragg	Live Oak	Palmdale	San Joaquin	Tulare
Calabasas	Fortuna	Livermore	Paramount	San Jose	Tuolumne County
Calaveras County	Foster City	Livingston	Parlier	San Juan Capistrano	Turlock
California City	Fresno	Lodi	Pasadena	San Leandro	Twentynine Palms
Calimesa	Fullerton	Lomita	Petaluma	San Luis Obispo	Ukiah
Calistoga	Garden Grove	Lompoc	Pismo Beach	San Luis Obispo County	Vacaville
Camarillo	Gardena	Los Banos	Placentia	San Marino	Ventura
Campbell	Glendale	Lynwood	Placer County	San Mateo	Victorville
Capitola	Glendora	Madera County	Placerville	San Mateo County	Vista
Carlsbad	Glenn County	Mammoth Lakes	Pleasant Hill	San Ramon	Waterford
Carmel	Greenfield	Manteca	Plymouth	Santa Barbara	West Covina
Carpinteria	Gridley	Marin County	Pomona	Santa Barbara County	Wheatland
Carson	Grover Beach	Marysville	Port Hueneme	Santa Clara	Williams
Cathedral City	Hanford	Mendota	Porterville	Santa Clara County	Windsor
Ceres	Hawaiian Gardens	Menlo Park	Portola	Santa Maria	Winters
Chico	Hayward	Merced	Poway	Santa Monica	Woodland
Chino Hills	Hemet	Mission Viejo	Rancho Mirage	Santa Paula	Yorba Linda
Chowchilla	Hercules	Mono County	Red Bluff	Saratoga	Yreka
Claremont	Hesperia	Monrovia	Redding	Scotts Valley	Yuba City
Clovis	Hidden Hills	Montague	Redlands	Seal Beach	Yuba County
Colton	Highland	Monte Sereno	Redwood City	Sebastopol	Yucaipa
Colusa	Hollister	Montebello	Reedley	Shafter	
Colusa County	Humboldt County	Monterey Park	Rialto	Shasta County	
Corona	Huntington Beach	Moorpark	Richmond	Sierra County	
Costa Mesa	Imperial County	Moraga	Ridgecrest	Signal Hill	

## Jurisdictions That Rely on Consultants to Prepare EIRs

The following cities and counties usually rely on consultants to prepare EIRs for proposed projects:

Adelanto	Angels Camp	Auburn	Benicia	Burbank	Campbell
Agoura Hills	Antioch	Avenal	Beverly Hills	Burlingame	Capitola
Alameda	Apple Valley	Azusa	Big Bear Lake	Butte County	Carlsbad
Alameda County	Arcadia	Bakersfield	Blythe	Calabasas	Carmel
Albany	Arcata	Baldwin Park	Bradbury	Calaveras County	Carpinteria
Alhambra	Arroyo Grande	Banning	Brawley	Calxico	Carson
Alpine County	Artesia	Barstow	Brentwood	Calimesa	Cathedral City
American Canyon	Arvin	Bell	Brisbane	Calipatria	Ceres
Anaheim	Atascadero	Bell Gardens	Buellton	Calistoga	Cerritos
Anderson	Atherton	Belmont	Buena Park	Camarillo	Chico

Chino	Fowler	Lancaster	Newport Beach	Sacramento	South Lake Tahoe
Chino Hills	Fremont	Larkspur	Norco	Salinas	South Pasadena
Chowchilla	Fresno	Lassen County	Norwalk	San Benito County	South San Francisco
Claremont	Fresno County	Lathrop	Novato	San Bernardino	St. Helena
Clayton	Fullerton	Lawndale	Oakdale	San Bernardino County	Stanislaus County
Clearlake	Galt	Lemon Grove	Oceanside	San Bruno	Stanton
Cloverdale	Garden Grove	Lemoore	Ojai	San Carlos	Stockton
Clovis	Gardena	Lincoln	Ontario	San Clemente	Suisun City
Coachella	Gilroy	Live Oak	Orange	San Diego	Sunnyvale
Colfax	Glendale	Livermore	Orange County	San Diego County	Susanville
Colma	Glendora	Livingston	Oroville	San Dimas	Sutter County
Colton	Gonzales	Lodi	Oxnard	San Fernando	Sutter Creek
Colusa	Grand Terrace	Loma Linda	Pacifica	San Gabriel	Taft
Colusa County	Grass Valley	Lomita	Palm Desert	San Jacinto	Tehama
Commerce	Greenfield	Lompoc	Palm Springs	San Joaquin	Tehama County
Compton	Gridley	Loomis	Palmdale	San Joaquin County	Temecula
Concord	Grover Beach	Los Alamitos	Palo Alto	San Jose	Thousand Oaks
Contra Costa County	Half Moon Bay	Los Altos	Palos Verdes Estates	San Juan Bautista	Tiburon
Corcoran	Hanford	Los Altos Hills	Paradise	San Juan Capistrano	Torrance
Corona	Hawaiian Gardens	Los Angeles	Paramount	San Leandro	Trinity County
Coronado	Hawthorne	Los Banos	Parlier	San Luis Obispo	Truckee
Corte Madera	Hayward	Los Gatos	Pasadena	San Luis Obispo County	Tulare
Cotati	Healdsburg	Lynwood	Paso Robles	San Marcos	Tulare County
Covina	Hemet	Madera	Patterson	San Marino	Tuolumne County
Cudahy	Hercules	Madera County	Perris	San Mateo	Turlock
Culver City	Hermosa Beach	Malibu	Petaluma	San Mateo County	Tustin
Cupertino	Hesperia	Mammoth Lakes	Pico Rivera	San Pablo	Twentynine Palms
Cypress	Hidden Hills	Manhattan Beach	Piedmont	San Rafael	Ukiah
Daly City	Highland	Marin County	Pinole	San Ramon	Union City
Dana Point	Hillsborough	Marina	Pismo Beach	Sand City	Vacaville
Danville	Hollister	Mariposa County	Pittsburg	Sanger	Vallejo
Davis	Holtville	Martinez	Placencia	Santa Barbara	Ventura
Del Mar	Hughson	Marysville	Placer County	Santa Barbara County	Ventura County
Del Norte County	Humboldt County	Maywood	Placerville	Santa Clara	Vernon
Del Rey Oaks	Huntington Beach	Mendocino County	Pleasant Hill	Santa Clara County	Victorville
Delano	Huntington Park	Mendota	Pleasanton	Santa Clarita	Villa Park
Diamond Bar	Huron	Menlo Park	Plumas County	Santa Cruz	Visalia
Dinuba	Imperial County	Merced	Plymouth	Santa Cruz County	Vista
Dixon	Indian Wells	Merced County	Point Arena	Santa Fe Springs	Walnut
Downey	Indio	Mill Valley	Pomona	Santa Maria	Walnut Creek
Duarte	Industry	Millbrae	Port Hueneme	Santa Monica	Wasco
Dublin	Inglewood	Milpitas	Porterville	Santa Paula	Waterford
Dunsmuir	Inyo County	Mission Viejo	Portola	Santa Rosa	Watsonville
East Palo Alto	Ione	Modesto	Portola Valley	Santee	Weed
El Cajon	Irvine	Modoc County	Poway	Saratoga	West Covina
El Centro	Kerman	Monrovia	Rancho Cucamonga	Sausalito	West Hollywood
El Cerrito	Kern County	Montague	Rancho Mirage	Scotts Valley	West Sacramento
El Dorado County	King City	Montclair	Rancho Palos Verdes	Seal Beach	Westlake Village
El Monte	Kings County	Monte Sereno	Redding	Seaside	Westminster
El Segundo	Kingsburg	Montebello	Redlands	Sebastopol	Wheatland
Emeryville	La Canada-Flintridge	Monterey	Redondo Beach	Selma	Whittier
Encinitas	La Habra	Monterey Park	Redwood City	Shafter	Williams
Escalon	La Habra Heights	Moorpark	Reedley	Shasta County	Willows
Escondido	La Mesa	Moraga	Rialto	Sierra County	Windsor
Etna	La Mirada	Moreno Valley	Richmond	Sierra Madre	Winters
Eureka	La Palma	Morgan Hill	Rio Dell	Signal Hill	Woodlake
Exeter	La Puente	Morro Bay	Rio Vista	Simi Valley	Woodland
Fairfax	La Quinta	Mount Shasta	Ripon	Siskiyou County	Woodside
Fairfield	La Verne	Murrieta	Riverbank	Solana Beach	Yolo County
Farmersville	Laguna Beach	Napa	Riverside	Solano County	Yorba Linda
Ferndale	Laguna Hills	Napa County	Riverside County	Soledad	Yreka
Fillmore	Laguna Niguel	National City	Rocklin	Solvang	Yuba City
Folsom	Lake County	Needles	Rohnert Park	Sonoma	Yuba County
Fontana	Lake Elsinore	Nevada City	Rolling Hills	Sonoma County	Yucaipa
Fort Bragg	Lake Forest	Nevada County	Rolling Hills Estates	Sonora	Yucca Valley
Foster City	Lakeport	Newark	Rosemead	South El Monte	
Fountain Valley	Lakewood	Newman	Roseville	South Gate	

**For those cities and counties that have relied on consultants, the following have allowed the developer alone to select the EIR consultant:**

Amador County	Cerritos	Humboldt County	Loma Linda	Perris	Siskiyou County
American Canyon	Colma	Huntington Beach	Los Angeles	Pomona	South Gate
Anaheim	Covina	Huron	Los Banos	Redding	Stockton
Avenal	Del Norte County	Inglewood	Milpitas	Reedley	Tehama County
Baldwin Park	East Palo Alto	Inyo County	Mission Viejo	San Bernardino County	Tulare County
Big Bear Lake	El Segundo	Kern County	Monterey Park	San Diego	Ventura
Calxico	Ferndale	La Habra	Moreno Valley	San Diego County	Victorville
California City	Gridley	La Quinta	Newark	San Joaquin County	Villa Park
Calipatria	Hemet	Lake Forest	Orange County	San Jose	
Carlsbad	Highland	Lawndale	Parlier	San Marino	

**For those cities and counties that have relied on consultants, the following have involved the developer in the consultant selection process:**

Agoura Hills	Ceres	Healdsburg	Modesto	Riverbank	Soledad
Alameda	Chico	Hercules	Modoc County	Riverside	Solvang
Alameda County	Chino	Hesperia	Montclair	Riverside County	Sonoma County
Alhambra	Chowchilla	Hollister	Montebello	Rocklin	Sonora
Alpine County	Coachella	Holtville	Moorpark	Rohnert Park	South El Monte
Anderson	Colton	Hughson	Morgan Hill	Rosemead	South Lake Tahoe
Angels Camp	Colusa	Huntington Park	Mount Shasta	Roseville	St. Helena
Apple Valley	Colusa County	Indian Wells	Napa	Sacramento	Stanislaus County
Arcadia	Commerce	Industry	Napa County	Salinas	Stanton
Arroyo Grande	Compton	Inyo County	Nevada City	San Benito County	Suisun City
Arvin	Concord	Irvine	Newman	San Bernardino	Susanville
Atascadero	Contra Costa County	Jackson	Newport Beach	San Carlos	Tehama County
Atherton	Cudahy	King City	Norco	San Dimas	Tiburon
Auburn	Culver City	Kings County	Norwalk	San Jacinto	Trinity County
Bakersfield	Cypress	La Canada-Flintridge	Novato	San Juan Bautista	Truckee
Banning	Dana Point	La Mirada	Oakdale	San Leandro	Tulare
Barstow	Del Rey Oaks	La Puente	Ojai	San Mateo	Tuolumne County
Bell	Dinuba	Laguna Hills	Orange	San Rafael	Tustin
Bell Gardens	Duarte	Laguna Niguel	Pacific	San Ramon	Twentynine Palms
Belmont	El Cajon	Lake Elsinore	Palm Springs	Sand City	Vacaville
Benicia	El Dorado County	Lakeport	Palmdale	Santa Barbara	Vallejo
Bishop	El Monte	Lakewood	Paso Robles	Santa Barbara County	Ventura County
Blythe	Emeryville	Lathrop	Patterson	Santa Clara	Vernon
Bradbury	Fairfax	Lemon Grove	Petaluma	Santa Cruz	Visalia
Brawley	Fairfield	Lemoore	Pico Rivera	Santa Cruz County	Vista
Brentwood	Farmersville	Lincoln	Pismo Beach	Santa Maria	Walnut Creek
Brisbane	Folsom	Live Oak	Pittsburg	Santa Paula	Wasco
Buellton	Fontana	Livermore	Placerville	Santee	Watsonville
Buena Park	Fountain Valley	Loomis	Plymouth	Saratoga	Weed
Burbank	Fowler	Los Alamitos	Port Hueneme	Sausalito	Westminster
Butte County	Fresno County	Los Altos Hills	Porterville	Scotts Valley	Wheatland
Calabasas	Fullerton	Los Angeles County	Portola Valley	Seaside	Windsor
Calaveras County	Garden Grove	Madera County	Rancho Cucamonga	Sebastopol	Yorba Linda
Calimesa	Glenn County	Malibu	Rancho Mirage	Shasta County	Yreka
Calistoga	Grand Terrace	Mammoth Lakes	Rancho Palos Verdes	Sierra County	Yuba City
Camarillo	Grass Valley	Marin County	Redlands	Sierra Madre	
Capitola	Greenfield	Marina	Redwood City	Signal Hill	
Carmel	Hanford	Mendocino County	Rio Dell	Simi Valley	
Carpinteria	Hawthorne	Merced	Rio Vista	Siskiyou County	
Cathedral City	Hayward	Millbrae	Ripon	Solano County	

**For those cities and counties that have relied on consultants, the agency alone selects the EIR consultants in the following :**

Adelanto	Brea	Clovis	Daly City	East Palo Alto	Eureka
Antioch	Burlingame	Colfax	Danville	El Centro	Exeter
Arcata	Campbell	Colma	Davis	El Cerrito	Fillmore
Artesia	Carlsbad	Corona	Del Mar	El Segundo	Fort Bragg
Azusa	Carson	Coronado	Diamond Bar	Encinitas	Foster City
Benicia	Claremont	Corte Madera	Dixon	Escalon	Fresno
Beverly Hills	Clearlake	Cotati	Downey	Escondido	Galt
Brawley	Cloverdale	Cupertino	Dublin	Etna	Gardena

May 2000

## Jurisdictions That Have Adopted a Jurisdiction-Wide Mitigation Monitoring Program:

Agoura Hills  
Bakersfield  
Belmont  
Chula Vista  
City of Orange  
Cloverdale

Concord  
Corning  
Cupertino  
Daly City  
Folsom  
Fortuna

Fresno  
Hercules  
La Quinta  
Lompoc  
Los Angeles County  
Modesto

Monterey  
Napa  
Oxnard  
Petaluma  
Placer County  
Porterville

Rosemead  
San Diego  
San Mateo  
Signal Hill  
Tracy  
Turlock

Union City  
Victorville  
Villa Park  
West Sacramento

## Jurisdictions That Have Used the CEQA Exemption Provided in Public Resources Code Section 21080.14 for Affordable Housing Projects:

Bakersfield  
Brawley  
Brentwood  
Calipatria  
Capitola  
Coronado  
Emeryville  
Encinitas

Escondido  
Fountain Valley  
Fresno  
Gilroy  
Glendale  
Grover Beach  
Half Moon Bay  
Hawaiian Gardens

Humboldt County  
Huron  
Kingsburg  
La Verne  
Lemoore  
Los Angeles County  
Napa  
Oakland

Pacifica  
Pasadena  
Placer County  
Placerville  
Pleasant Hill  
Pomona  
Redding  
Redwood City

Rohnert Park  
Salinas  
San Diego  
San Fernando  
San Francisco  
San Jacinto  
San Luis Obispo County  
San Mateo

Santa Barbara  
Santa Paula  
South San Francisco  
Stanton  
Taft  
Watsonville  
West Sacramento

## Jurisdictions That Allow Applicants/Developers to Hire Their Own Environmental Consultants to Prepare Draft CEQA Documents:

Alhambra  
Alturas  
Amador County  
Anaheim  
Anderson  
Arvin  
Atwater  
Auburn  
Avenal  
Baldwin Park  
Banning  
Barstow  
Beaumont  
Bell Gardens  
Bellflower  
Blue Lake  
Blythe  
Buena Park  
Burlingame  
Calaveras County  
Calxico  
Calimesa  
Calipatria  
Capitola  
Carlsbad  
Ceres  
Cerritos  
Chowchilla

Citrus Heights  
City of Orange  
Cloverdale  
Colton  
Colusa County  
Commerce  
Compton  
Corcoran  
Cudahy  
Cupertino  
Dana Point  
Del Norte County  
Dinuba  
Dos Palos  
El Cajon  
El Monte  
El Segundo  
Eureka  
Exeter  
Fairfield  
Farmersville  
Ferndale  
Fountain Valley  
Fresno  
Fullerton  
Galt  
Garden Grove  
Glendora

Gonzales  
Grass Valley  
Greenfield  
Gridley  
Guadalupe  
Hemet  
Hercules  
Highland  
Hughson  
Humboldt County  
Huntington Park  
Huron  
Inglewood  
Irvine  
Jackson  
Kerman  
Kings County  
La Habra  
La Palma  
Lafayette  
Laguna Hills  
Lakeport  
Lemoore  
Lindsay  
Livingston  
Long Beach  
Los Angeles  
Los Angeles County

Marysville  
Maywood  
Merced County  
Millbrae  
Mission Viejo  
Monrovia  
Montclair  
Monterey Park  
Moorpark  
Moreno Valley  
Morro Bay  
Mount Shasta  
Needles  
Newark  
Newman  
Norco  
Oakland  
Oceanside  
Ontario  
Orinda  
Pacific Grove  
Palm Desert  
Palo Alto  
Pasadena  
Paso Robles  
Petaluma  
Piedmont  
Pinole

Pittsburg  
Placentia  
Point Arena  
Rancho Cucamonga  
Rancho Mirage  
Redding  
Rialto  
Ridgecrest  
San Bernardino  
San Bernardino County  
San Bruno  
San Diego  
San Diego County  
San Francisco  
San Gabriel  
San Jacinto  
San Jose  
San Juan Bautista  
San Luis Obispo  
San Luis Obispo County  
San Marino  
Santa Clara  
Santa Clarita  
Santa Fe Springs  
Saratoga  
Selma  
Shafter  
Siskiyou County

Solano County  
South El Monte  
South Lake Tahoe  
Stanislaus County  
Stanton  
Stockton  
Sunnyvale  
Sutter County  
Tehama  
Tehama County  
Temecula  
Trinity County  
Tulare  
Tulare County  
Tuolumne County  
Turlock  
Ukiah  
Union City  
Upland  
Vacaville  
Victorville  
Villa Park  
Watsonville  
Woodlake  
Woodside  
Yucca Valley

Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and  
Recommendations for Revision of Current County Practices

July 3, 2003

## ***ATTACHMENT 2***

*DRP's Report to CAO: Analysis of AB 406*  
*Amended version of AB 406 (June 2, 2003)*





*Los Angeles County*  
*Department of Regional Planning*  
*Director of Planning James E. Hartl, AICP*



April 14, 2003

TO: John Lounsbery, Intergovernmental Relations  
Chief Administrative Office

FROM:  James E. Hartl, AICP  
Director of Planning

Subject: ANALYSIS OF AB 406 (JACKSON)

**Recommended Position – Oppose**

**Status**

Introduced on February 14, 2003  
Amended April 3, 2003  
Referred to Committee on Natural Resources and heard on April 7, 2003.  
Re-referred to the Committee on Appropriations.

**Description**

This bill is an act to amend Sections 21082.1, 21089 and 21160 of the Public Resources Code, relating to environmental quality.

**Current Law**

The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare or to cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds the project will not have that effect.

**Bill Summary/ Major Provisions**

The bill would prohibit a person, including the project applicant or applicant's retained consultant, from submitting a draft environmental review document, or part thereof, to the public agency reviewing the project. The bill would require environmental review documents to be prepared directly by, or under contract to a public agency. Environmental documents include not only EIRs, but also negative declarations and mitigated negative declarations.

The bill authorizes the public agency to charge the applicant for the cost of producing and reviewing the environmental review document, including the cost of retaining an independent environmental consultant.

The bill would prohibit the public agency reviewing the environmental documents from accepting comments on the content and conclusions contained in the draft environmental review document, unless made by a responsible or trustee agency, on a draft document or any part of the document before the document is released for public review.

This bill requires the project applicant to grant access to the project site by the public agency or a consultant retained by the public agency.

The bill would prohibit the applicant from imposing on its consultants a confidentiality requirement that inhibits or prevents the disclosure of information regarding potential environmental impacts, mitigation measures, or project alternatives to the agency or to the public.

The bill proposes that no reimbursement be given to the County because "a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act..."

#### Operational and Fiscal Impact

Currently, the department's procedure for the preparation of environmental review documents is to allow the applicant to retain its own consultants for analysis and review of the potential environmental impacts of a project and for the preparation of technical reports necessary to complete a CEQA mandated environmental review. In the case of a formal public review CEQA document, County staff reviews the draft documents prepared by the applicant, then documents are accepted as County documents only when they are in a form that is satisfactory to the County.

In order to revise existing environmental review procedures according to the proposed legislation, the County would have to enter into direct contracts with consultants for the preparation of environmental review documents which would require additional staff members to perform contract management. Currently the department goes through approximately one Request for Proposals (RFP) process per year and receives 6-10 new EIR's and at least 80 negative declarations. Each RFP process would take a minimum of 3 months to bid for each separate EIR or other review document that needs to be prepared. A list of consultants may be kept on retainer for future projects as another option to side step the RFP process for each new environmental review document that needs to be prepared, but some time would be needed to perform the initial Request for Qualifications (RFQ) to prepare a list of consultants from a variety of disciplines for future use.

Because of the greater involvement by the County in the preparation of EIR's and in contract oversight, the review time would be lengthened and additional staff members would be needed to review the environmental documents. The amount of time necessary to process an application would increase, as would the cost of the discretionary review process. It is anticipated that a minimum of three additional staff members would be needed, one to review the environmental documents and two to perform contract management. Presently, two staff members are responsible for reviewing 30 different EIR's in progress. The County may also be responsible for contracting with technical consultants whose expertise are frequently needed in preparation of elements of the environmental review document.

A few different variations of environmental review procedures, specifically related to the preparation of EIR's, are in effect with other public agencies in the state. Some, like Orange County, enter into three-way contract agreements with the consultant and the applicant, or some, like the City of Santa Monica, retain a list of consultants from which an applicant can select and enter into a contractual agreement. Under the provisions of this bill, neither of these procedures would be permitted. The only procedure permitted would be direct contracting between the public agency and the consultants.

The County of Ventura enters into direct contractual agreements with consultants for the preparation of EIR's. In their process, a pre-approved list of consultants is retained from which the county selects and upon selection the consultant submits a proposal. For specialized projects requiring certain expertise, an RFP process is undertaken for selection of the consultant. An initial deposit of \$2000 is made by the applicant into an account. After costs for preparation of the documents are submitted to the county, they are then forwarded to the applicant who deposits any additional sums needed into the account. Payment is then forwarded to the consultant by the county. Subconsulting remains the responsibility of the consultant initially chosen for the project, for which additional costs are forwarded to the applicant. The applicant is expected to indemnify the county for any legal challenges to the validity of the environmental documents. If the applicant at any time challenges the environmental document, the county in nearly all cases, has been able to negotiate an agreement with the applicant and gain applicant support of the document prior to going to hearing.

#### Organization/Individuals in Support or Opposition

##### **Support:**

Planning and Conservation League (sponsor)  
Attorney General Bill Lockyer  
California League of Conservation Voters  
California Native Plant Society  
Defender of Wildlife  
Endangered Habitats League  
Environmental Defense Center  
Friends of the Park  
Granada Hills North Neighborhood Council  
North Valley Coalition

Sierra Club, California

**Opposition:**

American Planning Association, California Chapter  
Association of California Water Agencies  
Building Industry Association, Orange County Chapter  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Farm Bureau Federation  
California Manufacturers & Technology Association  
Construction Materials Association of California  
Consulting Engineers and Land Surveyors of California  
Home Ownership Advancement Foundation  
Southern California Edison  
Standard Pacific Homes  
Western Pacific Housing Company  
Western States Petroleum Association

**Contact with Other Public Agencies**

In conversations with other County departments, such as Public Works and Community Development Commission, it was indicated that no official departmental position regarding the bill would be taken and that these departments are not in opposition to the bill.

The legislative analyst for the City of Los Angeles circulated the bill among six different city departments. The Department of Public Works is opposed. Both the Planning and Harbor Departments are in opposition unless the bill is amended. The Harbor Department's main concern is how the bill, if passed, would effect agencies who act as both the lead agency and the project applicant and would like the bill amended so that the prohibition against the applicant's preparation of environmental documents not be applicable to public agencies acting as project applicants.

**Issues/Concerns Regarding the Bill**

The proposed revisions to CEQA would not necessarily result in the preparation of a less biased and more independent analysis of the potential environmental impacts of projects. In concept we agree with the objective of the legislation which could be accomplished by the provision prohibiting the project applicant from imposing confidentiality agreements upon its consultants. Otherwise, if the bill is enacted as currently written operational and fiscal impacts will result. The length of time required to prepare and review the environmental documents will be greater, as will the cost which would be passed on to the applicants. This could result in higher building costs which would then be passed on to the buyers. Considering the escalating housing costs in the

county, this could be an undesirable effect. A process would need to be implemented that would limit the time and expense to the county, and therefore the expense to the applicant to make this procedure feasible, but since all CEQA documents, including negative declarations, mitigated negative declarations, and EIR's, would be subject to the provisions of the bill this would be very difficult to accomplish.

Another potential problem with the legislation as currently written is in not allowing the applicant to comment on the content and conclusions contained in the draft environmental document until the document is released for public review. While the applicant may submit information or comments regarding the project, the site, or any information needed by the public agency or consultant to perform the environmental review, not allowing the applicant to comment on the actual draft documents until the public review period could result in further delays in the review process for projects, as well as unnecessary disputes between the applicant and the public agency.

An amendment to the bill providing additional flexibility to local agencies in terms of distinguishing between contracting for major and minor EIRs and excluding negative declarations from the bill requirements would be more acceptable. In the County Code, the county currently distinguishes between major and minor EIRs. An EIR is defined as major when the initial study discloses more than three of the following factors indicating a possible significant effect on the environment: geotechnical hazards, fire hazard, flood hazard, noise, water quality, air quality, biota, archaeological, historical, paleontological, scenic qualities, education, fire/sheriff services, liquid waste, traffic/access, other services, including utilities, and other factors (e.g., energy, community disruption, etc.). Local jurisdictions should have the flexibility to contract directly with the consultant for the preparation of a major EIR, but to allow the applicant to contract directly with a consultant for the preparation of a minor EIR or any study required for the preparation of a negative declaration or a mitigated negative declaration.

In conclusion, we support the provision of the bill which prohibits confidentiality agreements and feel that this is the major item that needs to be addressed by the legislature. The other provisions of the bill as currently written would create an obstacle to efficient and timely processing of environmental applications, as well as significantly increase the cost of discretionary reviews.

RH:SA:aa

ATTACHMENT

- AB 406

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 406**

**Introduced by Assembly Member Jackson  
(Coauthor: Assembly Member Pavley)**

February 14, 2003

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An act to amend Sections 21082.1, 21089, and 21160 of, *and to add Section 21099 to*, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 406, as amended, Jackson. Environmental quality.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA requires any draft EIR, EIR, ~~or~~ negative declaration, *or mitigated negative declaration* prepared pursuant to CEQA be prepared directly by, or under contract to, a public agency, and requires the lead

agency to circulate draft documents that reflect its independent judgment to appropriate state agencies and to the public for review and comments.

This bill would prohibit a person, including the project applicant or applicant's retained consultant, from submitting a draft environmental ~~review document~~ *impact report, environmental impact report, proposed negative declaration, proposed mitigated negative declaration*, or part thereof, to the public agency responsible for reviewing the project. ~~The bill would prohibit a public agency responsible for reviewing environmental documents from accepting specified comments on a draft document, or part thereof, before the document is released for public review. The bill would require the lead agency to independently review and analyze all evidence before adopting findings and conclusions and to base those findings and conclusions on substantial evidence in the record. By imposing additional duties on local agencies, this bill would impose a state-mandated local program.~~ *The bill would not apply the prohibition to a public agency that prepares those environmental documents for another public agency under contract, or to a project that the public agency intends to carry out itself.*

(2) CEQA permits a lead agency to charge and collect a reasonable fee from a project applicant in order to recover estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project.

~~This bill would specifically authorize the public a lead agency responsible for reviewing the project to recover charge and collect a reasonable fee from the project applicant to cover the cost of hiring an independent environmental consultant to assist in preparing any environmental review document for a project. The bill would also permit a lead agency to recover estimated costs incurred in preparing any environmental review document as required for a project and for other related work, including the cost of retaining environmental consultants, for preparing and reviewing a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration.~~

(3) CEQA declares that it is the policy of the state that persons and organizations interested in a project must make available, as soon as possible, all information relevant to the significant effects of a project, alternatives to the project, and mitigation measures that substantially reduce the project's negative environmental effects.

This bill would, ~~when a public agency requires~~ *require* access to a project site ~~that is under CEQA review to prepare an environmental review document, and upon reasonable notice, require the project applicant to grant access to the project site~~ *be granted to the employees of, or consultants retained by, a public agency or a consultant retained by the agency carrying out its CEQA responsibilities.* The bill would prohibit a project applicant from ~~imposing on~~ *enforcing against* its consultants a confidentiality ~~requirement~~ *agreement* that inhibits or prevents the disclosure of *data and* information regarding *baseline environmental conditions*, potential environmental impacts, potential mitigation measures, or project alternatives to the public agency or to the public. The bill would protect the project applicant's trade secrets *and other specified records* from disclosure to the public.

(4) ~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

This bill would ~~provide that no reimbursement is required by this act for a specified reason~~ *become operative on July 1, 2004.*

Vote: majority. Appropriation: no. Fiscal committee: *yes no.* State-mandated local program: *yes no.*

*The people of the State of California do enact as follows:*

- 1 SECTION 1. *The Legislature finds and declares the*
- 2 *following:*
- 3 (a) *In order to fulfill the purpose of the California*
- 4 *Environmental Quality Act to provide public agencies and the*
- 5 *general public with detailed and accurate information about the*
- 6 *environmental impacts of a proposed project and to identify*
- 7 *alternatives to the project or ways to mitigate or avoid the*
- 8 *environmental impacts, it is essential that California*
- 9 *Environmental Quality Act documents be prepared in a full, fair,*
- 10 *and impartial manner.*
- 11 (b) *Confidentiality agreements between project proponents*
- 12 *and their consultants can impair the ability of public agencies and*
- 13 *the general public to know and understand the potential*
- 14 *environmental impacts of a proposed project. Therefore, it is the*
- 15 *intent of the Legislature to restrict the use of confidentiality*



1 *agreements in connection with the California Environmental*  
2 *Quality Act.*

3 SEC. 2. Section 21082.1 of the Public Resources Code is  
4 amended to read:

5 21082.1. (a) A draft environmental impact report,  
6 environmental impact report, negative declaration, or mitigated  
7 negative declaration prepared pursuant to the requirements of this  
8 division shall be prepared directly by, or under contract to, a public  
9 agency. No other person, including the project applicant or a  
10 consultant retained by the project applicant, may submit a draft of  
11 ~~an environmental review document~~ *environmental impact report,*  
12 *environmental impact report, proposed negative declaration,*  
13 *proposed mitigated negative declaration,* or part thereof, required  
14 by this division to the public agency responsible for review of the  
15 ~~project. Consistent with Section 21089, that public agency may~~  
16 ~~charge the project applicant for the cost of producing and~~  
17 ~~reviewing an environmental review document required by this~~  
18 ~~division, including the cost of retaining independent~~  
19 ~~environmental consultants.~~

20 ~~(b) Upon reasonable notice to the project applicant, when a~~  
21 ~~public agency requires access to the project site to prepare an~~  
22 ~~environmental impact report or other environmental review~~  
23 ~~document, the project applicant shall grant the requested access to~~  
24 ~~the project site by the public agency or a consultant retained by the~~  
25 ~~public agency.~~ *project.*

26 *(b) Notwithstanding subdivision (a), this section is not*  
27 *intended to prohibit, and may not be construed as prohibiting, a*  
28 *public agency from preparing a draft environmental impact report,*  
29 *environmental impact report, negative declaration, or mitigated*  
30 *negative declaration that the public agency prepares for another*  
31 *public agency pursuant to a contract with that public agency or for*  
32 *a project that the public agency intends to carry out itself.*

33 (c) This section is not intended to prohibit, and may not be  
34 construed as prohibiting, a person, including the project applicant,  
35 from submitting information or other comments about the project  
36 setting, the project description, the project's potential  
37 environmental impacts, or potentially feasible mitigation  
38 measures or alternatives to reduce those impacts, to the public  
39 agency responsible for preparing an environmental review  
40 ~~document~~ *a draft environmental impact report, environmental*

1 *impact report, negative declaration, or mitigated negative*  
2 *declaration* required by this division. ~~However, the public agency~~  
3 ~~responsible for preparing environmental review documents may~~  
4 ~~not accept comments on the content and conclusions contained in~~  
5 ~~a draft environmental review document, or part thereof, from an~~  
6 ~~entity, other than a responsible or trustee agency, before the~~  
7 ~~document is released for public review.~~

8 (d) The lead agency shall do all of the following:

9 (1) ~~Independently review and analyze all evidence, including~~  
10 ~~each report or declaration information, reports, and declarations~~  
11 ~~required by this division, before adopting findings or conclusions.~~

12 (2) ~~Base its findings and conclusions on substantial evidence in~~  
13 ~~the record.~~

14 (3)

15 (2) Circulate draft documents that reflect its independent  
16 judgment.

17 (4)

18 (3) As part of the adoption of a negative declaration; *or* a  
19 mitigated negative declaration; or certification of an  
20 environmental impact report, find that the report or declaration  
21 reflects the independent judgment of the lead agency.

22 (5)

23 (4) Submit a sufficient number of copies of the draft  
24 environmental impact report, proposed negative declaration, or  
25 proposed mitigated negative declaration, and a copy of the report  
26 or declaration in an electronic form as required by the guidelines  
27 adopted pursuant to Section 21083, to the State Clearinghouse for  
28 review and comment by state agencies, if ~~either one or more~~ of the  
29 following apply:

30 (A) ~~A state agency is a lead agency, a responsible agency, or a~~  
31 ~~trustee agency for the project.~~

32 (B)

33 (A) *A state agency is any of the following:*

34 (i) *The lead agency.*

35 (ii) *A responsible agency.*

36 (iii) *A trustee agency.*

37 (B) *A state agency otherwise has jurisdiction by law with*  
38 *respect to the project.*

(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

~~SEC. 2.~~

SEC. 3. Section 21089 of the Public Resources Code is amended to read:

21089. (a) A lead agency may charge and collect a reasonable fee from a person proposing a project subject to this division ~~in order to recover~~ to cover the estimated costs incurred by the lead agency in preparing ~~an environmental review document required by this division and reviewing a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration~~ for the project and for other related work necessary to comply with this division ~~on~~ in connection with the project. *The fee may include the cost to the public agency of retaining environmental consultants.* Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this division under Section 21167 are not recoverable under this section.

(b) The Department of Fish and Game may charge and collect filing fees, as provided in Section 711.4 of the Fish and Game Code. Notwithstanding Section 21080.1, a finding required under Section 21081, or any project approved under a certified regulatory program authorized pursuant to Section 21080.5 is not operative, vested, or final until the filing fees required pursuant to Section 711.4 of the Fish and Game Code are paid.

~~SEC. 3.~~

SEC. 4. Section 21099 is added to the Public Resources Code, to read:

21099. *Access to the site of a project under review pursuant to this division shall be granted to employees of, or consultants retained by, a public agency carrying out its responsibilities pursuant to this division under the terms of, and subject to the conditions specified in, Section 65105 of the Government Code.*

SEC. 5. Section 21160 of the Public Resources Code is amended to read:

21160. (a) Whenever a person applies to a public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information that may be necessary to enable the public agency to

1 determine whether the proposed project may have a significant  
2 effect on the environment ~~or to prepare an, or that may be~~  
3 *necessary to prepare a draft environmental impact report,*  
4 *environmental impact report, negative declaration, or mitigated*  
5 *negative declaration.*

6 ~~(a) If any or all of the information so submitted is a “trade~~  
7 ~~(b) If a portion of the data and information submitted~~  
8 ~~constitutes a “trade secret” as defined in Section 6254.7 of the~~  
9 ~~Government Code by those submitting that information, it, that~~  
10 ~~portion may not be included in the draft environmental impact~~  
11 ~~report, environmental impact report, negative declaration, or~~  
12 ~~mitigated negative declaration, or otherwise disclosed by a public~~  
13 ~~agency. This section may not be construed to prohibit the exchange~~  
14 ~~of properly designated trade secrets between public agencies that~~  
15 ~~have lawful jurisdiction over the preparation of the impact report.~~

16 ~~(b) A project applicant may not impose upon its own draft~~  
17 ~~environmental impact report, environmental impact report,~~  
18 ~~negative declaration, or mitigated negative declaration.~~

19 ~~(c) When a person applies to a public agency for a lease,~~  
20 ~~permit, license, certificate, or other entitlement for use that is~~  
21 ~~subject to this division, the project applicant may not enforce~~  
22 ~~against its own consultants a confidentiality requirement~~  
23 ~~agreement that inhibits or prevents the disclosure to the public~~  
24 ~~agency or, except for trade secrets, as defined in Section 6254.7 of~~  
25 ~~the Government Code, or records protected under Section 6254.10~~  
26 ~~of the Government Code, to the public of data and information~~  
27 ~~regarding a baseline environmental conditions, potential~~  
28 ~~environmental impact impacts of the project, potential mitigation~~  
29 ~~measures, or project alternatives.~~

30 ~~SEC. 4.— No reimbursement is required by this act pursuant to~~  
31 ~~Section 6 of Article XIII B of the California Constitution because~~  
32 ~~a local agency or school district has the authority to levy service~~  
33 ~~charges, fees, or assessments sufficient to pay for the program or~~  
34 ~~level of service mandated by this act, within the meaning of~~  
35 ~~Section 17556 of the Government Code.—~~

36 ~~SEC. 6. (a) Section 2 of this act is intended specifically to~~  
37 ~~supersede the court’s decision in Friends of La Vina v. County of~~  
38 ~~Los Angeles (1991) 232 Cal.App.3d 1446, that the California~~  
39 ~~Environmental Quality Act (Division 13 (commencing with~~  
40 ~~Section 21000) of the Public Resources Code) authorizes a project~~

1 applicant to prepare, or employ others to prepare, a draft  
2 environmental impact report, environmental impact report,  
3 negative declaration, or mitigated negative declaration. Section 2  
4 of this act is not intended to affect any other part of that decision  
5 or any rights or obligations of the parties to that case or any other  
6 case decided on the basis of those decisions before the operative  
7 date of this act.

8 (b) This act is not intended to require a public agency to incur  
9 additional, unreimbursed costs in instances in which it is both the  
10 lead agency and the project applicant for a project under review  
11 pursuant to the California Environmental Quality Act (Division 13  
12 (commencing with Section 21000) of the Public Resources Code).  
13 SEC. 7. This act shall become operative on July 1, 2004.

Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and  
Recommendations for Revision of Current County Practices

July 3, 2003

## ***ATTACHMENT 3***

*Results from Surveyed Jurisdictions*

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## **A. NEIGHBORING COUNTIES**

### **Kern County**

*Contact: Cheryl Casdorff (661) 862-8600 Fax (661) 862-8600*

In Kern County, the applicant contracts directly with the consultant to prepare an EIR for a project. The County does not maintain a list of authorized consultants and generally does not object to the applicant's preference. The County then exercises independent review of the submittals.

The Planning Department consists of twenty-five (25) planners and all land use applications are processed in a "project management" fashion. However, due to the amount of time and level of expertise required to review EIRs, a group of five planners led by one supervisor review only EIR documents for private development proposals and County's general and specific plans. The Department currently has approximately fifteen (15) EIR projects, out of which twelve (12) are private development projects.

### **Orange County**

*Contact: Charles Shoemaker (714) 834-2166*

Orange County maintains a list of preferred consultants authorized to prepare documents for which the County is the California Environmental Quality Act (CEQA) lead agency. The applicant selects an EIR consultant from the list and enters into a three-party agreement with the County and the consultant. The applicant establishes a deposit account with the County. The consultant and other review fees associated with the project are paid through this county account. It is to be noted that the County's three-way agreement does not prohibit communications between the consultant and the applicant.

Staff assigned to the Environmental & Project Planning Services Division (EPPSD) of the Orange County is responsible for the implementation of CEQA. The Division is the County's center for CEQA compliance and environmental documentation. The Orange County had three (3) planners assigned to handle environmental review and environmental document preparation for private projects. These three planners reviewed an average of two to three EIRs each year. However, it currently has one planner responsible for all EIR projects due to an unusual budget cut this year.

### **Riverside County<sup>a</sup>**

*Contact: James Fagelson (909) 955-6646*

Riverside County allows the project applicant to contract directly with the environmental consultant on the List of Qualified Environmental Consultants. However, the Planning

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<sup>a</sup> Please refer to the County's "Additional Procedures to Implement the California Environmental Quality Act," which is available at the County's official website, for details regarding EIR preparation.



Department maintains a policy that prior to the submittal to the County of any technical reports including EIRs, the consultant must first execute a Memorandum of Understanding (MOU) with the County regarding the content of the environmental reports and procedures under which they will be prepared and submitted. The MOU specifically requires that under no circumstances may the consultant submit any reports to the applicant before submitting it to the County.

Either the applicant or the Planning Department can be responsible for the preparation of the EIR (Section 601 of the County's Procedures to Implement CEQA). Often the applicant contracts directly with an EIR consultant selected from the County's List, while the County independently reviews, evaluates, and if necessary revises the EIR.

In the event that the County does not have the expertise to review the portions of EIR, it will go through the RFP process and contract directly with a consultant with the needed expertise (i.e., air quality analysis for a warehouse project) to perform third-party reviews. Projects under \$25,000 require no approval from the Board of Supervisors.

The Planning Department of Riverside County consists of fifty (50) planners and currently processes approximately twelve (12) to fifteen (15) EIRs. Five (5) senior planners who are project managers of these EIR projects including case processing.

### **San Bernardino County**

*Contact: Randy Scott (909) 387-4147*

Planning staff prepares and initiates the RFP process upon determining that an EIR is necessary for the project. The RFP is sent to consultants on a general environmental consultant list maintained by the County Planning Department. EIR consultants are placed on the general list through the State of Qualifications (SOQ) process. A marketing service company in San Bernardino County also checks with staff on a regular basis for any new RFPs and will distribute the RFP to other potential consultants through its network.

The County Manager is authorized to approve contracts for EIR projects that are under \$75,000. EIR Projects exceeding \$75,000 require approval of the County Board of Supervisors (the Board). The RFP process generally takes from three (3) to four (4) months before a final consultant is selected when the Board approval is required. The selected consultant will then enter into a direct contract with the County. No communication between the consultant and the applicant is allowed unless pre-authorized by the County staff.

Currently, the County of San Bernardino has fifteen (15) EIRs in various stages of review assigned to two staff members with one clerical staff to assist in the accounting aspect of the contract management. These two planners are responsible only for EIRs and a few complicated Mitigated Negative Declaration (MND) projects. Negative Declaration (ND) and MND are prepared by a different group of staff.

## **San Diego County<sup>b</sup>**

*Contact: Glenn Russell (858) 694 2981*

San Diego County employs a practice of preparing EIRs that is a modified version of the County of Los Angeles' current developer-contracted method. San Diego County procedures require the project applicant to select and directly contract with an environmental consultant from a pre-approved list compiled by the County.

Individual consultants are approved for placement on the County's Environmental Consultants List through a detailed Request for Qualifications process implemented by San Diego County's Department of Planning and Land Use. Prospective individual consultants (not the entire consulting firm) interested in being placed on the list must submit for County review a formal application, a filing fee of \$255, a statement of qualifications based on County-formulated criteria, and a sample of a recently drafted technical report or Environmental Impact Report prepared directly by the applicant.

Prospective consultants must clearly demonstrate how they meet the minimum requirements in one or more of twenty separate fields (for example, EIR preparation, hydrology, acoustics, biota, traffic analysis). A full description of the consultant's qualifications must be included in the application packet. Applications are reviewed by the Planning Director's appointed Environmental Consultants List Review Committee (ECLRC). Members usually include a Community Planning Chief and two Environmental Management Specialist III staff persons.

The ECLRC evaluates prospective consultants based on specific criteria including the following: education, professional certification, work experience, previous compliance with State and County CEQA Guidelines, compliance with direction regarding clarification and/or revision of documents, accuracy of technical data, use of appropriate field techniques, quality of judgment regarding determination of environmental significance of impacts, and compliance with established work timelines.

Once approved, consultants must go through two orientation programs with the San Diego County Planning Department. Consultants are placed on the list for a period of four years and may be removed from the list by the Director based on unsatisfactory work performance.

The Planning Department has approximately one hundred (100) staff members excluding code enforcement and public counter staff. There are twenty-five (25) Environmental Analysts whose only responsibility is to conduct CEQA review for private development projects. Approximately eight to ten of the analysts review EIRs. The County currently has twenty-five (25) private EIR projects in various stages of review.

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<sup>b</sup> "Procedures for Application for Placement on the Environmental Consultants List" is available from the County of San Diego website

**Ventura County**

*Contact: Patrick Richards (805) 654 5192*

Ventura County maintains a pre-approved list of consultants, from which it selects for a specific project. This list is updated every two years and approved by the Board of Supervisors. Upon selection, the consultant submits a proposal for the scope of work required. However, for projects which require special expertise or limit in scope, the Planning Department may be allowed to select consultants not on the list as long as it can prove that the consultant is well qualified. For large projects, a RFP process, which takes from 3 to 5 months, is undertaken to select a final consultant. Considerable time is spent on determining the scope of the EIR project among staff members. The scope of work for any Environmental Impact Report (EIR) project is detailed in the contract and payments are disbursed according to an agreed upon schedule.

The Planning Department of Ventura County is part of the Resource Management Agency. The contract is administered for the Planning Department by the Operation Division within the Agency. Reports prepared by the consultant under the contract are not made available to any third party including the applicant without prior written approval of the County.

An initial deposit to the County is made by the applicant to initiate the Request for Proposal (RFP) process. The billable costs associated with the EIR preparation are forwarded periodically to the applicant who then deposits sufficient sums to cover those costs into the account. Payment to the consultant is then disbursed through the county from the EIR account. Any sub-contracting remains the responsibility of the EIR consultant.

Although not directly involved in the EIR preparation process, aside from being responsible for costs, the applicant is expected to indemnify the county for any legal challenges to the adequacy of the environmental documents. If the applicant challenges the environmental document, the county, in nearly all cases, has been able to negotiate an agreement with the applicant and gain applicant support of the document prior to public hearing.

Ventura County generally has three to four ongoing EIR projects every year. Each project is assigned to a different planner with three different supervisors to oversee all EIR projects. The case planner and his supervisor are responsible for preparing the RFP and subsequently the contract. It is to be noted that when an EIR is submitted to the Planning Department, the Department will forward it to other departments for review within the County. Each department is responsible for the factor/section of its jurisdiction.

## **B. OTHER COUNTIES**

### **El Dorado County**

*Contact: Roger Evans (530) 621-5355*

For any EIR project, El Dorado County will distribute the Notice of Preparation (NOP) and at the same time distribute the RFP to a few consultants selected from a general list of consultants maintained by the County.

Three or four staff members from various County departments will review proposals and select the finalist for the County Board of Supervisors' approval. The entire selection process usually takes six months.

The County then executes two contracts when an EIR is prepared: one with the applicant who agrees to be responsible for all costs associated with the preparation of the EIR, and the other with the consultant specifying the scope of work and other requirements.

The El Dorado County Planning Department consists of four (4) planners and currently is processing two (2) EIRs: one for a private development project and the other for the County's General Plan update.

### **Sacramento County**

*Contact: Joyce Horizumi (916) 874-8110*

The Sacramento County Department of Environmental Review and Assessment (DERA) is the central for environmental review processing in Sacramento County including land use applications filed with the Planning and Community Development Department. The DERA prepares CEQA environmental documents for all privately and publicly initiated projects.

The DERA does not accept documents prepared by project applicants. The majority of the CEQA documents and related technical reports are prepared in-house by staff. The County sometimes contracts directly with consultant(s) to prepare documents to ensure timely environmental review. The DERA maintains a pre-approved list of consultants, from which it selects for sole-source contracting. The DERA also utilizes the RFP process (which generally takes two months) to select a consultant for large EIR projects. The DERA has authority to execute contracts under \$50,000.

The DERA has thirty (30) approved positions and is sustained by fees collected and not by general funds. There are twenty-five (25) staff members and approximate thirty-five (35) EIRs are for planning as well as capital improvement projects. Approximately half of the current EIRs are contracted out currently.

**City and County of San Francisco**

*Contact: Bill Wycko (415) 558-5972*

The Major Environmental Analysis (MEA) Division of the Planning Department is responsible for preparing CEQA documents for development proposals, capital improvement project, and long-range plans within the City and County of San Francisco.

The applicant contracts directly with the consultant to prepare necessary technical studies including EIR for staff review. However, under no circumstances may the consultant submit any reports to the applicant before submitting them to the City.

Information on the number of EIR projects the MEA currently is processing was not available. Approximately two-third of all EIR projects is for private development.<sup>c</sup>

**San Luis Obispo County**

*Contact: John Nall (805) 781-5027*

The Department of Planning and Building is responsible for preparing CEQA documents for all development projects within San Luis Obispo County.

The County utilizes the SOQ procedures to compile a certified list of consultants who will enter into a preliminary contract with the County for potential EIR projects within the next two years. The current list consists of ten (10) to fifteen (15) consultants.<sup>d</sup>

When the County determines that a project requires an EIR, the County sends the RFP to consultants on the certified list. Upon receiving responses from consultants, the County will review their proposal and select the finalist. The applicant is allowed to provide inputs in the selection process. However, the final decision is to the County and it requires the Board of Supervisors' approval. The RFP usually can be completed in one to two months.

No communications are allowed between the consultant and the applicant without the County's authorization.

Four (4) staff members acting as project managers are assigned to complex ND and EIR projects, while other planners in the Department handle their own projects including environmental review. The Department is the CEQA clearinghouse for the entire County and is processing ten (10) EIRs for all publicly and privately initiated projects (i.e., capital improvement, long-range planning, and private development) within the County. The County usually has 15-20 EIRs per year.

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<sup>c</sup> The City of San Diego conducted a survey which includes the City and County of San Francisco in 2002. The survey indicates that the City and County of San Francisco processes approximately 10 to 12 EIRs per year.

<sup>d</sup> The County staff interviewed indicates that only local consultants are invited to participate in the SOQ process. As a result, the list contains only 10-15 consultants.

### **Santa Barbara County**

*Contact: Jackie Campbell (805) 568-2076*

The Department of Planning and Development is responsible for the preparation of CEQA documents for all development proposals and long-range planning projects (i.e., General Plan and Community Plan) within Santa Barbara County.

The County goes through a two-to-four-week RFP process to select a particular consultant for the preparation of the EIR. The RFP is sent to all consultants on a Certified List which is updated and re-certified by the Board of Supervisors every other year. Upon receiving responses from consultants on the RFP, the County staff and the applicant review together the proposals submitted and provides a short list of consultants which meet County's minimum qualification requirements. The applicant then chooses one (EIR) consultant from this short list for his project who will contract directly with the County. Communications between the consultant and the applicant are minimal and on minor issues once the contract is formed.

The Department consists of one hundred and eighty (180) planners and currently has approximately five (5) to ten (10) EIR projects in total for both current planning and long-range planning projects. Approximately fifty (50) planners are involved in these EIR projects.

### **Santa Clara County<sup>e</sup>**

*Contact: Hugh Graham (408) 299-5789*

A master list of qualified environmental consultants to prepare environmental documents is maintained by the County. The County staff has the authority to add or delete firms from this list based on the submittal of new information or unsatisfactory performance on prior environmental services for the County. Consultants desiring to be placed on the master list submit a proposal to prepare environmental documents in accord with County procedures together with their current qualifications and experience.

A Review Board consisting of county employees and outside professionals reviews the submittal, establishes a list of finalists, and interviews the finalist firms every three years. Each firm is ranked and the top five firms are selected to sign a professional services agreement to prepare environmental documents for the County for the next three years. As a result, the selected consultant is able to submit its work plan including cost estimate and scope of work to the County within a few weeks after being notified. The Planning Department is authorized to approve the contract.

Prior to entering into a contract with the County to prepare a specific environmental document, and during the life of the contract, the consultant must affirm that it is not in a contractual relationship with the project proponent (including any subsidiary, parent, or

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<sup>e</sup> Santa Clara County's process is summarized from official document entitled, "Procedures for Consultants to Prepare Environmental Documents for Private Project in Santa Clara County."

related company, spouse or dependent children) and affirm that it does not have a financial interest in the proposed project or any other property or development of interest to the applicant.

All communications between the County and the consultant regarding preparation of environmental documents are confidential. The consultant shall not disclose these communications to any person or entity including the applicant.

Communication between the applicant and the consultant is allowed only under the following conditions: (1) the communication involves verification of material received by the consultant or an inquiry by the consultant concerning details of the project proposal that are minor or incidental in nature. (2) County staff must be present at the meeting or provide prior approval for any discussions which go beyond the above. (3) Consultant must maintain a record of all applicant contacts to inform County staff of the subject of any discussion.

The consultant will provide an estimate of the costs associated with the project prior to commencing working on the EIR. Upon agreement with the consultant on the cost estimate, the applicant deposits into a project EIR fund an amount equal to these estimates plus 26.5% to cover County fees and unexpected contingencies. Expenditures from this fund are made by the County to the consultant. Payments to the consultant are made on a "flat fee" basis, with progress payments paid with the approval of the Planning Manager.

Santa Clara County currently has seven (7) private development EIR projects. One supervisor and four (4) planners are responsible for both case processing and CEQA compliance. Two supporting staff members assist in contract management for EIR projects.

## **C. CITIES WITHIN LOS ANGELES COUNTY**

### **City of Los Angeles**

*Contact: Maya Zaitzevsky (213) 978-1355*

The City of Los Angeles relies on consultants who contract directly with project applicants to prepare EIRs. The City Planning Department staff then provides independent review of all environmental documents once they are submitted to the City.

The City's Planning Department assigns five (5) planners whose primary responsibility is to review and prepare environmental documents for all development applications filed with the Department. Two of the five planners review only EIR projects and there are at any one time approximately fifteen (15) active EIR projects in various stages of review.

### **City of Palmdale**

*Contact: Amy Brislen (661) 267-5200*

The City of Palmdale allows both applicant-contracting and City-contracting for the preparation of an Environmental Impact Report. The project applicant may hire a qualified consultant to prepare an EIR, or the City may hire the private consultant directly. In either case, the contracted consultant is required to possess or apply for a business license in the City of Palmdale. The City charges the applicant 30% of the total cost of the EIR for staff processing and management time. There is no separate environmental review staff at the City. If a staff planner is assigned a project and it requires an EIR than that planner will also manage the EIR preparation and review process. According to City staff contacted, their department has processed only two (2) or three (3) EIRs in the past three years.

### **City of Pasadena**

*Contact: Nancy Key (626) 744 6710*

Prior to October, 2002, the City of Pasadena utilized the RFP process whenever an EIR was required. The City is in the process of modifying the RFP procedure to be more cost-efficient. The modified process will be for the City to initiate a Request for Qualifications (RFQ) process very two years to create a short list of three to four finalists, to which City will send the RFP when an EIR needs to be prepared. City staff from various departments forms a review committee to determine the finalists.

Once an EIR consultant is chosen through the RFP process, the City executes a contract directly with the consultant to prepare the EIR. Contracts exceeding \$75,000 require the City Council's approval.

The applicant's only involvement in the EIR preparation process is to provide a detailed project description. No communication between the applicant and consultant is



permitted and under no circumstance does the applicant receive the DEIR prior to the City.

A group of five (5) planners in the City's Planning Department are responsible for the preparation of CEQA documents for projects in both current and advance planning. There are seven ongoing EIRs and only one of them is a private development project.

**City of Santa Clarita**

*Contact: Jeff Hogan (661) 255-4330*

On projects requiring an EIR, the RFP is sent to five (5) consultants deemed appropriate for the project by the Planning staff. Upon receiving at least three (3) consultant proposals, a review committee consisting of two planning staff and one City official outside of the Planning Department will interview the consultants, make a final decision, and obtain approval of the decision from the City Council prior to entering into direct contract with the consultant. The entire RFP process generally takes three months to complete.

The City of Santa Clarita has one (1) planning staff responsible for three ongoing EIR projects with one additional planning staff assisting on a part-time basis. One clerical staff is in charge of the billing activities.

**City of Santa Monica**

*Contact: Brad Misner (310) 458-8341*

The Planning and Community Development Department of the City of Santa Monica is responsible for preparing environmental documents for development proposals processed by the City. The Department initiates an informal RFP process, which takes two to four weeks, to select a final consultant and then directly contracts with the final consultant. The City maintains a general consultant database.

Upon being selected, the consultant, the City and the applicant sign a tri-party agreement to commence the EIR process. Communications between the consultant and the applicant must go through the City.

The Department consists of twenty four (24) full-time positions and fourteen of them may be assigned to EIR projects if needed. The planner assigned acts as a project manager and his/her responsibilities include not only environmental review but also case processing.

## **D. OTHER CITIES**

### **City of Brea, Orange County**

*Contact: David Crabtree, City Planner, (714) 990-7674*

The RFP process, which generally takes two months, is initiated to select an EIR consultant for every EIR project the City processes. Staff prepares the RFP and sends it to three or four consultants deemed qualified by the City. The applicant may request a certain consultant to be added to the RFP list. Upon receiving responses from the consultants, the City will review their proposals and select the finalist to enter into a contract with the City. The City is not obliged to select a consultant with the lowest bid but the one that is most qualified. EIR projects exceeding \$25,000 and major contract amendments will require the City Council's approval.

The City processed four (4) EIRs in 2002. The City's Planning Department consists of five planners responsible for all planning functions and CEQA compliance.

### **City of Carlsbad, San Diego County**

*Contact: Barbara Kennedy (760) 602-4626*

The City of Carlsbad utilizes direct contracting for EIR projects. When staff determines that an EIR is required for a project, an RFP is sent out to eight (8) to ten (10) different consultants selected by the City staff. The process generally takes 3 to 4 months from the initiation of the RFP to the final City Council approval of the contract/consultant. The applicant is not allowed to participate in the consultant selection process and must agree with the City's final decision. Communications between the consultant and the applicant are limited to minor inquiries and approval from the City planning/project manager staff is required before any communication may occur.

However, it is to be noted that the applicant is allowed to contract directly with a consultant preparing technical studies for small MND and ND projects.

The City's planning staff is responsible for the preparation and oversight of environmental documents and case processing. Currently it has two (2) private EIR projects, each assigned to a different planner with two supporting staff assisting in contract management (One to review contracts and the other to handle billing activities). These two planners are also assigned non-EIR projects (i.e., ND and MND).

### **City of La Habra, Orange County**

*Contact: Carlos Jaramillo (562) 905-9724*

When it is determined that an EIR is required, the applicant will select a consultant to prepare the EIR from a list of consultants provided by the City. All consultants are interviewed and their qualifications reviewed by the City before they are listed.

The City then executes two contracts: one with the applicant who agrees to be responsible for all costs associated with the EIR, and the other focusing on the scope of work and other requirements with the EIR consultant.

The City generally has approximately ten (10) to fifteen (15) projects that require consultant's services. The majority of these are ND and MND projects. For ND and MND projects, the City allows the applicant to contract directly with the consultant to perform necessary technical studies. However, the City will review the contract and requires the applicant acknowledge that the consultant is preparing a City document and is obliged to disclose all information including any conversation with the applicant to the City.

The City processed one EIR for a Costco project in 2002. The Planning Director supervises four (4) planning staff members and is responsible for all planning functions within the City. For EIR projects, one planner will be assigned to conduct the EIR review and associated contract management only while another planner will be responsible for case processing.

**City of Sacramento, Sacramento County**

*Contact: Jim Regan-Vienop (916) 264-7856*

The City of Sacramento Planning and Building Department Planning Division Environmental Planning Services (EPS) Section is responsible for major CEQA and NEPA review (i.e., complex ND and EIR projects) for capital improvement, private, and public planning projects. The EPS also oversee and provide quality control for Exemptions and simple Negative Declarations prepared by the Current Planning staff.

The EPS may either prepare the CEQA/NEPA documents in-house or go through the RFP process to contract directly with consultants for the preparation of environmental documents and technical studies. The result of this practice is that the EPS staff members spend more than 10% (not taking into account the time of accounting staff) of total staff time in EIR accounting activities. Therefore, the City is in the process of revising its current procedures and will develop an official procedure to allow the applicant contract directly with the consultant. Other details to be finalized before the new policy taking place include requiring the applicant to sign an MOU acknowledging that the City has full control of the direction of the contracted EIR document.

The EPS currently has nine (9) planners and one clerical staff member handling thirty-four (34) EIR projects at various review stage, fourteen (14) of which are private EIR projects. The Department also has a part-time accounting staff assisting in accounting activities of EIR projects. According to the City staff interviewed, the EPS generally has 25 to 30 ongoing EIR projects.

**City of San Diego, San Diego County**

*Contact: Eileen Lower (619) 446-5345*

While the City of San Diego Planning Department focuses on long-range planning, the Department of Development Services Environmental Analysis Section (EAS) consists of twenty-five (25) environmental planners and prepares CEQA documents for all projects within the City.

The EAS allows the applicant to contract directly with an EIR consultant. In preparation of an EIR, the EIR consultant needs to follow closely the City's "Environmental Impact Report Guidelines" (revised September 2002) which describe in detail the format and content of an EIR. The Guidelines are revised by staff as needed.

In addition to independently reviewing the EIR prepared by the applicant-contracted EIR consultant, the "Conclusions" section of any EIR is prepared in-house by staff.

Out of the twenty-five (25) planners, sixteen (16) Associate and Senior Planners are involved in processing EIRs. The EAS has approximately twenty (20) EIR projects, out of which sixteen (16) are private development projects.

**City of San Jose, Santa Clara County**

*Contact: Janis Moore (408) 277 4576*

Like Los Angeles County, the City of San Jose allows the applicant to contract directly with the consultant to prepare EIR and other necessary technical reports. The applicant selects his consultant from a general list maintained by the City.

The Planning Department currently has approximately eight-five (85) positions. A group of four (4) planners are assigned to review nineteen (19) to twenty (20) EIRs at various processing phases. The majority of these EIRs are for private development projects. This group of four also provides assistance to other planning staff within the Planning Department in preparing minor CEQA/NEPA documents and conducts CEQA/NEPA review for other departments within the City.

Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and Recommendations for  
Revision of Current County Practices

July 3, 2003

***ATTACHMENT 4***

*Draft Memorandum of Understanding/Affidavit*

**MEMORANDUM OF UNDERSTANDING  
ENVIRONMENTAL IMPACT REPORT  
PREPARATION AND HANDLING OF  
(PROJECT # / PROJECT ADDRESS / "PROJECT NAME")**

THIS AGREEMENT, hereinafter referred to as the "MOU", is made and entered into, by and between the **County of Los Angeles Department of Regional Planning**, hereinafter referred to as the "COUNTY", and \_\_\_\_\_ (**APPLICANT NAME**), hereinafter referred to as "Applicant", and \_\_\_\_\_ (**EIR CONSULTANT NAME**), hereinafter referred to as "EIR Consultant", for the purpose of establishing rights and responsibilities of all undersigned parties hereto in relation to the preparation and handling of an ENVIRONMENTAL IMPACT REPORT for the above referenced project.

The COUNTY, APPLICANT, and EIR CONSULTANT do hereby agree as follows:

**I. GENERAL TERMS**

- A. The COUNTY is the Lead Agency with land use and planning jurisdiction in the above referenced project area of unincorporated Los Angeles County as pertains to the California Environmental Quality Act, hereinafter referred to as "CEQA".
- B. The APPLICANT has submitted an application for the development of the proposed Project whereas the COUNTY and the APPLICANT have agreed that the above referenced Project has the potential to cause major environmental impacts, necessitating the preparation of an ENVIRONMENTAL IMPACT REPORT, hereinafter referred to as "EIR".
- C. The EIR CONSULTANT retained by the APPLICANT is a professional environmental consultant or consulting firm with extensive experience in the preparation of EIRs.
- D. The APPLICANT and EIR CONSULTANT shall be responsible to ensure that all SUB-CONTRACTED CONSULTANTS comply with all terms and condition set forth in the MOU.

- E. The EIR CONSULTANT and all SUB-CONTRACTED CONSULTANTS shall not be a subsidiary of the project APPLICANT or have any financial interest in the proposed project or any other property or development of interest to the APPLICANT.
- F. The COUNTY reserves the right to further review the statement of qualifications and past work product to confirm that the EIR CONSULTANT is fully qualified for preparation of the EIR and related technical reports for the Project.
- G. APPLICANT is designated as a Contracting Agent for administering the contract with the EIR CONSULTANT for the preparation of the EIR.
- H. The APPLICANT shall be responsible for the management of the EIR CONSULTANT in the preparation of the EIR and associated technical reports including: the content of the EIR, the extent and detail of topic area discussions, the consideration of, and written response to comments received during the Notice of Preparation, circulation of the Draft EIR, and the Final EIR.
- I. APPLICANT shall be responsible for one-hundred percent (100%) of EIR preparation and review costs incurred by the COUNTY and the EIR CONSULTANT.
- J. APPLICANT shall be responsible for one-hundred percent (100%) of the cost incurred by the COUNTY for a third-party review of any portion of the EIR when such a review is deemed necessary by the COUNTY.
- K. Upon request, all EIR CONSULTANT and their SUB-CONTRACTED CONSULTANTS shall execute a document certifying that all pertinent environmental information has been disclosed to the COUNTY, and that no pertinent information has been left out of the administrative record or deliberately withheld from the COUNTY at the request of the APPLICANT.

- L. APPLICANT and EIR CONSULTANT/SUB-CONTRACTED CONSULTANTS shall not enter into any form of confidentiality agreement that prohibits disclosure of information to the COUNTY or other public agencies.

## II. EIR PREPARATION AND SUBMITTAL

- A. The APPLICANT and EIR CONSULTANT shall be responsible to ensure that the EIR document, including its technical reports, reflects the independent judgment of the COUNTY, per Public Resources Code Section 21082.1, including all documentation prepared and submitted by the EIR CONSULTANT and/or APPLICANT with respect to the Draft EIR, the Response to Comments Document, and the Final EIR.
- B. The APPLICANT and EIR CONSULTANT shall be responsible to ensure that all EIR documents and materials are prepared utilizing accurate and verifiable field techniques and professional work performance standards, and are prepared in conformance with all applicable CEQA requirements, and other County, State, and Federal rules, regulations, and laws, including any and all documents prepared by SUB-CONTRACTED CONSULTANTS.
- C. The EIR CONSULTANT shall be responsible to verify that all EIR documents represent their complete and independent judgment and analysis of the Project-specific environmental setting, issues, potential impacts, and mitigation measures associated with the proposed Project.
- D. The EIR CONSULTANT shall draft the EIR in accordance with all directions from COUNTY staff regarding its form and content.
- E. The APPLICANT AND EIR CONSULTANT shall be responsible for public noticing and scheduling with public meetings related to the Project and for distribution of the Draft and Final EIRs.
- F. The COUNTY retains the right to attend any and all meetings between the APPLICANT and any EIR CONSULTANT and/or their SUB-CONTRACTED CONSULTANTS. It is the responsibility of the APPLICANT to provide a minimum of one week prior notice of any and all such meetings.



- G. Copies of all correspondence, meeting schedules, minutes, and draft technical reports generated by the EIR CONSULTANT/SUB-CONTRACTED CONSULTANTS shall be submitted to the COUNTY prior or simultaneously to submittal to the APPLICANT. Copies of any such documents pertaining to the EIR generated by the APPLICANT for the EIR CONSULTANT shall be provided to the COUNTY.
- H. Upon request, the EIR CONSULTANT/SUB-CONTRACTED CONSULTANTS shall submit to the COUNTY all field notes, resource documents, and supplemental technical studies used in the preparation of the EIR.
- I. The EIR CONSULTANT shall submit the initial Draft EIR to the COUNTY prior to submitting it to the APPLICANT. Any subsequent changes to the document will be monitored and reviewed by the COUNTY before the APPLICANT/EIR CONSULTANT resubmit the Draft EIR for formal review through COUNTY screencheck and public review processes. This does not preclude the APPLICANT from commenting on the contents of the environmental document.

### III. INDEMNIFICATION

- A. The APPLICANT shall defend, indemnify and hold harmless the COUNTY, its agents, officers, and employees from any claim, action, or proceeding against the COUNTY or its agents, officers, or employees to attack, set aside, void or annul certification of the EIR associated with the Project and/or any part of the environmental review process, which action is brought within the applicable time period of Government Code Section 65009. The COUNTY shall notify the APPLICANT of any claim, action, or proceeding and the COUNTY shall reasonably cooperate in the defense.

### IV. EXPIRATION

- A. This agreement shall expire at the time that the action by the Los Angeles County Board of Supervisors and/or Regional Planning Commission becomes administratively final for the Project and the EIR, unless otherwise amended by the COUNTY.

IN WITNESS WHEREOF, the COUNTY, the APPLICANT and the EIR CONSULTANT have caused this agreement to be executed. Furthermore, under the penalty of perjury, the APPLICANT and EIR CONSULTANT do agree that all documents submitted to the COUNTY are in conformance with all requirements set forth in the MOU and the "County of Los Angeles Environmental Document Reporting Procedures and Guidelines".

ATTESTED:

***COUNTY OF LOS ANGELES***

\_\_\_\_\_  
Director, Department of Regional Planning

Dated: \_\_\_\_\_

***EIR CONSULTANT***

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Company Name

Dated: \_\_\_\_\_

***APPLICANT***

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Company Name

Dated: \_\_\_\_\_

Los Angeles County Department of Regional Planning  
Report on Review of Environmental Document Preparation and  
Recommendations for Revision of Current County Practices

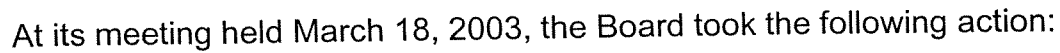
July 3, 2003

***ATTACHMENT 5***

*Board of Supervisors Motion: March 18, 2003*



→ Director of Planning



Supervisor Antonovich made the following statement:

“A recent survey of several neighboring jurisdictions disclosed that there are a variety of alternative methods in use for the preparation of environmental documents. Some agencies such as the City of Santa Clarita arrange for the preparation of these documents by the agency through the use of the Request For Proposals process. Others like Orange County utilize three party contracts between the agency, the applicant and the consultant to lead to the preparation of the document. Still others use a certified list of approved consultants from which applicants can select the entity to prepare the document. Each of these techniques is designed to ensure that the consultant has every incentive to prepare a complete and accurate document.

- 1 -

Syn. 77 (Continued)

"In a recent report to the Board, the Department of Regional Planning raised several issues regarding the costs and length of time that some of these alternatives could entail. These are certainly legitimate concerns, but the value of an even greater 'arms length' approach to the preparation of these documents outweighs these concerns.

"The Director of Planning should be instructed to review each of these alternatives in greater detail, along with any others that may exist, and return its report and recommendation as to which alternative it feels would best ensure the preparation of accurate and complete environmental documents and avoid even the perception of partiality in the preparation process."

Therefore, on motion of Supervisor Antonovich, seconded by Supervisor Molina, unanimously carried (Supervisor Yaroslavsky being absent), the Director of Planning was instructed to:

1. Review various alternative techniques regarding the preparation of environmental documents, and
2. Report back to the Board within 90 days with recommendations as to what revisions are needed to improve the County's environmental document process.

9031803-77

Copies distributed:

Each Supervisor  
Chief Administrative Officer  
County Counsel